

**TOWN COUNCIL OF DEWEY-HUMBOLDT
STUDY SESSION MEETING NOTICE**

Tuesday, November 10, 2015, 2:00 P.M.

**COUNCIL STUDY SESSION MEETING
2735 S. HWY 69**

**COUNCIL CHAMBERS, TOWN HALL
DEWEY-HUMBOLDT, ARIZONA**

AGENDA

The issues that come before the Town Council are often challenging and potentially divisive. In order to make sure we benefit from the diverse views to be presented, the Council believes that the meeting be a safe place for people to speak. With this in mind, the Council asks that everyone refrain from clapping, heckling and any other expressions of approval or disapproval. Council may vote to go into Executive Session for legal advice regarding any matter on the open agenda pursuant to A.R.S. 38-431.03 (A) (3), which will be held immediately after the vote and will not be open to the public. Upon completion of Executive Session, the Council may resume the meeting, open to the public, to address the remaining items on the agenda. Agenda items may be taken out of order. Please turn off all cell phones. The Council meeting may be broadcast via live streaming video on the internet in both audio and visual formats. One or more members of the Council may attend either in person or by telephone, video or internet conferencing. **NOTICE TO PARENTS:** Parents and legal guardians have the right to consent before the Town of Dewey-Humboldt makes a video or voice recording of a minor child. A.R.S. § 1-602.A.9. Dewey-Humboldt Council Meetings are recorded and may be viewed on the Dewey-Humboldt website. If you permit your child to participate in the Council Meeting, a recording will be made. You may exercise your right not to consent by not permitting your child to participate or by submitting your request to the Town Clerk that your child not be recorded.

1. Call To Order.

2. Roll Call. Town Council Members Arlene Alen, Mark McBrady, Dennis Repan, Doug Treadway, Nancy Wright; Vice Mayor Jack Hamilton; and Mayor Terry Nolan.

3. Study Session. No legal action to be taken.

3.1. Proposed "Reasonable Accommodations" Ordinance. Council review and discussion.

3.2. Proposed "Animal Ordinances". Council review and discussion.

3.3. Discussion and consensus on when, how and what process to use for the Town Manager's performance review. [CAARF requested by CM Wright]

3.4. Discuss amendment to 30.031 B (11). [CAARF requested by CM Repan]

3.5. Additional verbiage to 30.085. [CAARF requested by CM Repan]

4. Special Session. Legal action can be taken.

4.1. Whether to hold additional special session(s) this month. This is an established agenda item for Council's discussion on whether to add an additional special study session and if so, to set the date.

5. Adjourn.

For Your Information:

Next Town Council Meeting: Tuesday, November 17, 2015, at 6:30 p.m.

Next Planning & Zoning Meeting: Thursday, December 3, 2015, at 6:00 p.m.

Next Town Council Work Session: Tuesday December 8, 2015, at 2:00 p.m.

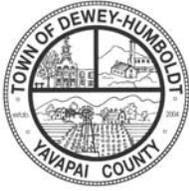
If you would like to receive Town Council agendas via email, please sign up at AgendaList@dhaz.gov and type Subscribe in the subject line, or call 928-632-7362 and speak with Judy Morgan, Town Clerk.

Certification of Posting

The undersigned hereby certifies that a copy of the attached notice was duly posted at the following locations: Dewey-Humboldt Town Hall, 2735 South Highway 69, Humboldt, Arizona, Chevron Station, 2735 South Highway 69, Humboldt, Arizona,

Blue Ridge Market, Highway 69 and Kachina Drive, Dewey, Arizona, on the ____ day of _____, 2015, at ____ p.m. in accordance with the statement filed by the Town of Dewey-Humboldt with the Town Clerk, Town of Dewey-Humboldt.
By: _____, Town Clerk's Office.

Persons with a disability may request reasonable accommodations by contacting the Town Hall at 632-7362 at least 24 hours in advance of the meeting.



TOWN OF DEWEY-HUMBOLDT
P.O. BOX 69
HUMBOLDT, AZ 86329
Phone 928-632-7362 ▪ Fax 928-632-7365

TOWN COUNCIL STUDY SESSION

November 10, 2015, 2:00 p.m. Town Council Meeting Chambers

Agenda Item: # 3.1. Reasonable Accommodation Ordinance (proposed)

To: Mayor and Town Council Members

From: Yvonne Kimball, Town Manager

Date submitted: November 4, 2015

Summary:

Occasionally, the Town receives requests of accommodations to Town Code requirements. Although state and federal laws require local zoning authorities to offer reasonable accommodations under certain situations, Town zoning code does not specify the requirement.

It has been the desire of the Council and staff to develop a procedure for accommodation to be included in the Town codes.

The proposed ordinance provides amendments to Town Code Section 150 and 153 to reflect the adoption of Arizonans with Disabilities Act and add the new Section 153.024 Reasonable Accommodations in an effort to provide handicapped persons who qualify as disable and/or handicapped, the same opportunities for housing and land use, as other persons who are not handicapped.

The proposed ordinance outlines the process which would require applicants to submit to the Zoning Administrator a written request for accommodation and the reasons why the accommodation is requested. The request will contain sufficient facts to allow the Zoning Administrator to make an individualized determination of the person's needs, to address the Town's safety and welfare concerns, and to assure compliance with the Town's Zoning Code. Staff also developed an application form to accompany the proposed ordinance.

ORDINANCE No. 15-118

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, COUNTY OF YAVAPAI, ARIZONA, DELCARING THE DOCUMENT ENTITLED "ARIZONANS WITH DISABILITIES ACT" AS A PUBLIC RECORD; ADOPTING THE "ARIZONA WITH DISABILITIES ACT" BY REFERENCE; AMENDING THE TOWN OF DEWEY-HUMBOLDT, ARIZONA CODE OF ORDINANCES, TITLE XV LAND USAGE, CHAPTER 150 BUILDING CODES, SUBCHAPTER CODES ADOPTED, § 150.011 EFFECTIVE DATE RELATED TO ADOPTING "THE ARIZONANS WITH DISABILITIES ACT"; AND CHAPTER 153 ZONING REGULATIONS, SUBCHAPTER GENERAL PROVISIONS, BY AMENDING § 153.005 DEFINITIONS TO ADD DEFINITIONS OF "HANDICAPPED PERSON" AND "REASONABLE ACCOMMODATION"; AND AMENDING SUBCHAPTER ADMINISTRATION, ENFORCEMENT BY ADDING NEW § 153.024 REASONABLE ACCOMMODATIONS RELATED TO PROVIDING A PROCEDURE FOR GRANTING REASONABLE ACCOMMODATIONS TO HANDICAPPED PERSONS PURSUANT TO FEDERAL AND STATE FAIR HOUSING AND DISABILITIES LAWS; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES

Whereas, that certain document entitled "Arizonans with Disabilities Act", three copies of which are on file in the office of the Town Clerk, is hereby declared to be a public record and said copies are hereby ordered to remain on file with the Town Clerk; and

Whereas, pursuant to federal and state fair housing laws and the Americans with Disabilities Act, the Town may not make zoning and land use decisions or implement land use policies that exclude or otherwise discriminate against individuals with disabilities; and

Whereas, the Town is required to provide reasonable accommodations to persons with handicaps to enable them to enjoy the same opportunities for housing as other non-affected individuals; and

Whereas, the Town of Dewey-Humboldt Town Council desires to establish a procedure to facilitate responses to requests by persons in need of reasonable accommodations;

Now, Therefore, Be it ordained by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, as follows:

Section I. In General

The Town of Dewey-Humboldt, Arizona Code of Ordinances, Title XV Land Usage, Chapter 150 Building Codes, Subchapter Codes Adopted, Section 150.011 Effective Date is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

150.11 ~~Effective Date~~ADOPTION OF ARIZONANS WITH DISABILITIES ACT AND IMPLEMENTING RULES.

~~The effective date for this subchapter is July 1, 2007.~~ THAT CERTAIN DOCUMENT, THREE COPIES EACH OF WHICH ARE ON FILE IN THE OFFICE OF THE TOWN CLERK BEING MARKED AND DESIGNATED AS THE "ARIZONANS WITH DISABILITIES ACT" (ARIZONA REVISED STATUTES, TITLE 41, CHAPTER 9, ARTICLE 8), AND THE "ARIZONANS WITH DISABILITIES ACT IMPLEMENTING RULES" (ARIZONA ADMINISTRATIVE CODE, TITLE 10, CHAPTER 3, ARTICLE 4), WHICH INCORPORATES THE FEDERAL "2010 ADA STANDARDS FOR ACCESSIBLE DESIGN", IS HEREBY REFERRED TO, ADOPTED AND MADE A PART HEREOF AS THOUGH FULLY SET FORTH IN THIS SECTION, AS THE ARIZONANS WITH DISABILITIES ACT OF THE TOWN, AND SHALL APPLY TO NEW CONSTRUCTION AND ALTERATIONS AND ARE NOT REQUIRED IN BUILDINGS OR PORTIONS OF EXISTING BUILDINGS THAT DO NOT MEET THE STNDARDS AND SPECIFICATIONS.

The Town of Dewey-Humboldt, Arizona Code of Ordinances, Title XV Land Usage, Chapter 153 Zoning Regulations, Subchapter General Provisions, Section 153.005 Definitions is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

§ 153.005 Definitions

* * *

HANDICAPPED PERSON. A HANDICAPPED PERSON IS A "PERSON WITH A DISABILITY", AS THAT TERM IS DEFINED IN THE AMERICANS WITH DISABILITIES ACT AND INCLUDES (1) INDIVIDUALS WITH A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES; (2) INDIVIDUALS WHO ARE REGARDED AS HAVING SUCH AN IMPAIRMENT; AND (3) INDIVIDUALS WITH A RECORD OF SUCH AN IMPAIRMENT.

* * *

REASONABLE ACCOMMODATION. A REASONABLE ACCOMMODATION IS A CHANGE, EXCEPTION, OR ADJUSTMENT TO A RULE, POLICY, PRACTICE, OR SERVICE THAT MAY BE NECESSARY FOR A HANDICAPPED PERSON TO HAVE AN EQUAL OPPORTUNITY TO USE AND ENJOY A DWELLING, INCLUDING PUBLIC AND COMMON USE SPACES.

The Town of Dewey-Humboldt, Arizona Code of Ordinances, Title XV Land Usage, Chapter 153 Zoning Regulations, Subchapter Administration, Enforcement, is hereby amended to add new Section 153.024 Reasonable Accommodations to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

§ 153.024 REASONABLE ACCOMMODATIONS.

(A) *APPLICATION.* IF A HANDICAPPED PERSON BELIEVES A REQUIREMENT OF THE ZONING CODE PREVENTS HIM FROM ENJOYING THE SAME OPPORTUNITIES FOR HOUSING AS OTHER PERSONS WHO ARE NOT HANDICAPPED, THE OWNER SHALL SUBMIT TO THE ZONING ADMINISTRATOR A WRITTEN REQUEST FOR ACCOMMODATION AND THE REASONS WHY THE ACCOMMODATION IS REQUIRED. THE WRITTEN REQUEST SHALL CONTAIN SUFFICIENT FACTS TO ALLOW THE ZONING ADMINISTRATOR TO MAKE AN INDIVIDUALIZED DETERMINATION OF THE PERSON'S NEEDS, TO ADDRESS THE TOWN'S SAFETY AND WELFARE CONCERNS, AND TO ASSURE COMPLIANCE WITH THIS SECTION.

(B) *ZONING ADMINISTRATOR DETERMINATION.* THE ZONING ADMINISTRATOR SHALL REVIEW THE WRITTEN REQUEST AND DETERMINE:

(1) WHETHER AN ACCOMMODATION SHOULD BE MADE PURSUANT TO THE REQUIREMENTS OF THE FEDERAL AND STATE FAIR HOUSING LAWS; AND

(2) IF SO, THE NATURE OF THE ACCOMMODATION.

(C) *FACTORS TO BE CONSIDERED.* IN MAKING A DECISION, THE ZONING ADMINISTRATOR SHALL CONSIDER THE REQUIREMENTS OF THE FEDERAL AND STATE FAIR HOUSING LAWS, THE AMERICANS WITH DISABILITIES ACT, PUBLIC SAFETY AND WELFARE CONCERNS, AND THE RESIDENTIAL CHARACTER OF THE NEIGHBORHOOD. TO SHOW THAT A REQUESTED ACCOMMODATION MAY BE NECESSARY, THERE MUST BE AN IDENTIFIABLE RELATIONSHIP, OR NEXUS, BETWEEN THE REQUESTED ACCOMMODATION AND THE INDIVIDUAL'S DISABILITY.

(D) *EXTENT OF ACCOMMODATION.* THE ACCOMMODATION SHALL BE MADE ONLY TO THE EXTENT NECESSARY TO COMPLY WITH THE FEDERAL AND STATE FAIR HOUSING LAWS AND THE AMERICANS WITH DISABILITIES ACT.

Section II. Savings Clause

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance as amended 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 remainder of this Ordinance.

Section III. Repeal of Conflicting Ordinance

All other code provisions, ordinances, or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed as of the effective date hereof.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, this ___ day of _____, 2015, by the following vote:

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this ___ day of _____, 2015.

Terry Nolan, Mayor

ATTEST:

Judy Morgan, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.
Town Attorneys
By Susan D. Goodwin

I, JUDY MORGAN, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 15-118 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, ARIZONA ON THE ___ DAY OF _____, 2015, WAS POSTED IN THREE PLACES ON THE ___ DAY OF _____, 2015.

Judy Morgan, Town Clerk

Arizonans with Disabilities Act and Implementing Rules

Arizona Revised Statutes, Title 41, Chapter 9, Article 8

§ 41-1492. Definitions

In this article, unless the context otherwise requires:

1. "Americans with disabilities act" means 42 United States Code sections 12101 through 12213 and 47 United States Code sections 225 and 611 and the ADA amendments act of 2008 (P.L. 110-325; 122 Stat. 3553).

2. "Auxiliary aids and services" includes:

(a) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

(b) Qualified readers, taped text or other effective methods of making visually delivered materials available to individuals with visual impairments.

(c) Acquisition or modification of equipment or devices.

(d) Other similar services and actions.

3. "Being regarded as having such a physical or mental impairment":

(a) Means an individual who establishes that the individual has been subjected to an action prohibited under this article because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(b) Does not mean an impairment that is transitory and minor. For the purposes of this subdivision, "transitory impairment" means an impairment with an actual or expected duration of six months or less.

4. "Commercial facilities" means facilities that are intended for nonresidential use and that do not meet the definition of either a public accommodation or a public entity. Commercial facilities do not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars, railroad rights-of-way or facilities that are covered or expressly exempted from coverage under this article.

5. "Demand responsive system" means any system of providing the transportation of individuals by a vehicle, other than a system that is a fixed route system.

6. "Disability" means, with respect to an individual, any of the following:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.

(b) A record of such an impairment.

(c) Being regarded as having such an impairment.

7. "Fixed route system" means a system of providing the transportation of individuals by, other than by aircraft, a vehicle that is operated along a prescribed route according to a fixed schedule.

8. "Major life activities" includes:

(a) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

(b) The operation of a major bodily function, including functions of the immune system, normal cell growth and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

9. "Over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

10. "Private entity" means any entity other than a public entity.

11. "Public accommodation" includes any:

(a) Inn, hotel, motel or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor.

(b) Restaurant, bar or other establishment serving food or drink.

(c) Motion picture house, theater, concert hall, stadium or other place of exhibition or entertainment.

(d) Auditorium, convention center, lecture hall or other place of public gathering.

(e) Bakery, grocery store, clothing store, hardware store, shopping center or other sales or retail establishment.

(f) Laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital or other service establishment.

(g) Terminal, depot or other station used for specified public transportation.

(h) Museum, library, gallery or other place of public display or collection.

(i) Park, zoo, amusement park or other place of recreation.

(j) Nursery, elementary, secondary, undergraduate or postgraduate private school or other place of education.

(k) Day care center, senior citizen center, homeless shelter, food bank, adoption agency or other social service center establishment.

(l) Gymnasium, health spa, bowling alley, golf course or other place of exercise or recreation.

12. "Public entity" means any:

(a) State or local government.

(b) Department, agency, special purpose district or other instrumentality of a state or local government, including the legislature.

13. "Rail" or "railroad" has the meaning given the term "railroad" in section 202(e) of the federal railroad safety act of 1970 (45 United States Code section 431(e)).

14. "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

(a) The nature and cost of the action needed under this article.

(b) The overall financial resources of the facility or facilities involved in the action, the number of persons employed at the facility, the effect on expenses and resources or the impact otherwise of such action on the operation of the facility.

(c) The overall financial resources of the covered entity.

(d) The overall size of the business of a covered entity with respect to the number of its employees.

(e) The number, type and location of the covered entity's facilities.

(f) The type of operation or operations of the covered entity, including the composition, structure and functions of the facilities in question to the covered entity.

15. "Specified public transportation" means transportation by bus, rail or any other conveyance, other than aircraft, that provides the general public with general or special service, including charter service, on a regular and continuing basis.

16. "State" means the state of Arizona.

17. "Vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose or railroad car covered under this article.

§ 41-1492.01. Prohibition of discrimination by public entities

A. All buildings and facilities that are used by public entities and that are leased or constructed in whole or in part with the use of state or local monies, the monies of any political subdivision of this state or any combination of these monies shall conform to title II of the Americans with disabilities act.

B. This article applies to permanent buildings, additions to buildings, temporary buildings and emergency construction.

§ 41-1492.02. Prohibition of discrimination by public accommodations and commercial facilities

A. No individual may be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any person who owns, leases, leases to others or operates a place of public accommodation.

B. It is discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of that individual or class, directly or through contractual, licensing or other arrangements:

1. To a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, advantages, privileges or accommodations of an entity.

2. To the loss of an opportunity to participate in or benefit from goods, services, facilities, privileges, advantages or accommodations that are not equal to those afforded to other individuals.

3. To a good, service, facility, privilege, advantage or accommodation that is different or separate from that provided to other individuals, unless the action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, accommodation or other opportunity that is as effective as that provided to others. For the purposes of this subsection, "individual" or "individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

C. Goods, services, facilities, privileges, advantages and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

D. Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in programs or activities that are not separate or different. Nothing in this article shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity or benefit that the individual chooses not to accept.

E. An individual or entity, directly or through contractual or other arrangements, shall not utilize standards or criteria or methods of administration that:

1. Have the effect of discriminating on the basis of disability.

2. Perpetuate the discrimination of others who are subject to common administrative control.

F. It is discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

G. For the purposes of subsection A of this section, "discriminated against" includes:

1. The imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations, unless these criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages or accommodations being offered.

2. A failure to make reasonable modifications in policies, practices or procedures, if these modifications are necessary to afford these goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless the entity can demonstrate that making these modifications would fundamentally alter the nature of these goods, services, facilities, privileges, advantages or accommodations.

3. A failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of reasonable modifications in policies, practices or procedures or auxiliary aids and services, unless the entity can demonstrate that taking these steps would fundamentally alter the nature of the goods, service, facility, privilege, advantage or accommodation being offered or would result in an undue burden.

4. A failure to remove architectural barriers and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift if the removal is readily achievable.

5. If an entity can demonstrate that the removal of a barrier under paragraph 4 of this subsection is not readily achievable, a failure to make these goods, services, facilities, privileges, advantages or accommodations available through alternative methods if these methods are readily achievable.

H. It is discriminatory for a private entity that operates a fixed route system and that is not subject to section 304 of the Americans with disabilities act to purchase or lease a vehicle with a seating capacity in excess of sixteen passengers, including the driver, for use on this system, for which a solicitation is made after September 30, 1992, that is not readily accessible to and usable by individuals with disabilities including individuals who use wheelchairs. If a private entity that operates a fixed route system and that is not subject to section 41-1492.04 purchases or leases a vehicle with a seating capacity of sixteen passengers or less, including the driver, for use on such system after September 30, 1992 that is not readily accessible to or usable by individuals with disabilities, it is discriminatory for this entity to fail to operate this system so that, if viewed in its entirety, this system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities. Fixed route and demand response systems do not apply to over-the-road buses. For the purposes of this subsection, "discriminatory" includes:

1. A failure of a private entity that operates a demand responsive system and that is not subject to section 41-1492.04 to operate the system so that, if viewed in its entirety, the system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

2. The purchase or lease by the entity for use on the system of a vehicle with a seating capacity in excess of sixteen passengers, including the driver, for which solicitations are made after September 30, 1992, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that the system, if viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

3. The purchase or lease of an over-the-road bus that does not comply with section 306(a)(2) of the Americans with disabilities act by a private entity that provides transportation of individuals and that is not primarily engaged in the business of transporting people and any other failure of the entity to comply with section 306(a)(2) of the Americans with disabilities act.

I. Nothing in this article requires an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the entity if the individual poses a direct threat to the health or safety of others. For the purposes of this subsection, "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by modification of policies, practices or procedures or by the provision of auxiliary aids or services.

§ 41-1492.03. Incorporation of standards in building codes

A. The standards and specifications referred to in this article and its implementing rules as applying to public entities shall be incorporated in any building code in existence on or adopted after the effective date of this article by this state or any agency, department or political subdivision of this state. These standards and specifications apply to new construction and alterations and are not required in buildings or portions of existing buildings that do not meet the standards and specifications.

B. The standards and specifications referred to in this article and its implementing rules as applying to public accommodations and commercial facilities shall be incorporated in any building code in existence on or adopted subsequent to the effective date of this article by this state or any agency, department, or political subdivision of this state. These standards and specifications shall apply to new construction and alterations commenced after the effective date of such standards and specifications.

§ 41-1492.04. New construction and alterations in public accommodations and commercial facilities

A. Except as provided in subsection B of this section, as applied to public accommodations and commercial facilities, "discriminatory" for purposes of section 41-1492.02 includes:

1. A failure to design and construct facilities for first occupancy later than January 26, 1993 that are readily accessible to and usable by individuals with disabilities, except if an entity can demonstrate that it is structurally impracticable to meet the requirements of subsection B of this section in accordance with standards set forth or incorporated by reference in rules adopted under this article.

2. With respect to a facility or part of a facility that is altered by, on behalf of or for the use of an establishment in a manner that affects or could affect the usability of the facility or part of a facility, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the toilet rooms, telephones and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities if the alterations to the path of travel or the toilet rooms, telephones and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope.

B. Subsection A of this section shall not be construed to require the installation of an elevator for facilities that are fewer than three stories or that have less than three thousand square feet per story unless the building is a shopping center, a shopping mall or the professional office of a health care provider or unless the attorney general determines that a particular category of facilities requires the installation of elevators based on the usage of the facilities.

§ 41-1492.05. Prohibition of discrimination in specified public transportation services provided by private entities

A. No individual may be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce. For purposes of this subsection, "discriminated against" includes:

1. The imposition or application by an entity described in this subsection of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless these criteria can be shown to be necessary for the provision of the services being offered.

2. The failure of the entity to:

(a) Make reasonable modifications consistent with those required under section 41-1492.02.

(b) Provide auxiliary aids and services consistent with the requirements of section 41-1492.02.

(c) Remove barriers consistent with the requirements of section 41-1492.02 and with the requirements of section 41-1492.03.

3. The purchase or lease by the entity of a new vehicle, other than an automobile, a van with a seating capacity of fewer than eight passengers, including the driver, or an over-the-road bus that is to be used to provide specified public transportation and for which a solicitation is made after August 26, 1991 that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, except that the new vehicle need not be readily accessible to and usable by these individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that this system, if viewed in its entirety, provides a level of service to these individuals equivalent to the level of service provided to the general public.

4. The purchase or lease by the entity of an over-the-road bus that does not comply with section 306(a)(2) of the Americans with disabilities act and any other failure of the entity to comply with section 306(a)(2) of the Americans with disabilities act.

5. The purchase or lease by the entity of a new van with a seating capacity of fewer than eight passengers, including the driver, that is to be used to provide specified public transportation and that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs, except that the van need not be readily accessible to and usable by these individuals if the entity can demonstrate that the system for which the van is being purchased or leased, if viewed in its entirety, provides a level of service to these individuals equivalent to the level of service provided to the general public.

6. The purchase or lease by the entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than August 26, 1991, and that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

7. The remanufacture by the entity of a rail passenger car that is to be used to provide specified public transportation in order to extend its usable life for ten years or more, or the purchase or lease by the entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

B. To the extent that compliance with subsection A, paragraph 2, subdivision (c) or subsection A, paragraph 7 of this section would significantly alter the historic or antiquated character of an historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in a violation of any regulation, standard or order issued by the secretary of transportation under the federal railroad safety act of 1970, such compliance is not required. As used in this subsection, "historical or antiquated rail passenger car" means a rail passenger car:

1. That is at least thirty years old at the time of its use for transporting individuals.

2. The manufacturer of which is no longer in the business of manufacturing rail passenger cars.

3. That has a consequential association with events or persons significant to the past and that embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past or to represent a time period that has passed.

§ 41-1492.06. Rules

A. Not more than one year after the effective date of this article, the attorney general shall adopt rules pursuant to chapter 6 of this title to carry out the intent of this article. The attorney general shall hold a reasonable number of public hearings at locations throughout the state prior to adoption of these rules. The attorney general shall publish the proposed rules and provide opportunity to receive testimony and written comments before adoption of the rules. The attorney general may request and receive appropriate technical assistance.

B. Compliance with titles II and III of the Americans with disabilities act and its implementing regulations shall be deemed in compliance with this article. The rules adopted under this article shall not exceed the regulations, guidelines and standards issued by the United States departments of transportation and justice relating to titles II and III of the Americans with disabilities act. No rule or amendment to a rule may be adopted without prior public hearing, prior publication, and opportunity to receive testimony and written comments.

C. The attorney general shall periodically review the final rules and amend rules if amendments are needed to achieve consistency with regulations promulgated pursuant to the Americans with disabilities act.

D. Nothing in this article is intended to limit the power of any political subdivision of this state to adopt rules or codes that exceed the requirements of this article.

E. The attorney general, on behalf of this state, shall apply for certification with the appropriate federal agency for the purpose of establishing that this section and its implementing rules meet the minimum requirements of the Americans with disabilities act.

§ 41-1492.07. Exemptions for private clubs and religious organizations

This article does not apply to private clubs or establishments exempted from coverage under title II of the civil rights act of 1964 (42 United States Code section 2000(a)(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

§ 41-1492.08. Enforcement

A. Any person who believes that any covered person or entity has engaged in, or that there are reasonable grounds to believe that any covered person or entity is about to engage in, any act or practice prohibited by sections 41-1492.01 through 41-1492.05 or that any covered entity has not performed an act required by this article and its implementing rules may institute a civil action

for preventive or mandatory relief, including an application for a permanent or temporary injunction, restraining order or other order.

B. In the case of a violation of sections 41-1492.02 and 41-1492.04 injunctive relief includes an order to alter facilities to make these facilities readily accessible to and usable by individuals with disabilities to the extent required by this article. If appropriate, injunctive relief also includes requiring the provision of an auxiliary aid or service, the modification of a policy or the provision of alternative methods, to the extent required by this article.

C. A person may file a civil action in superior court not later than two years after the occurrence or the termination of an alleged discriminatory public accommodation practice or the breach of a conciliation agreement entered into under this article, whichever occurs last, to obtain appropriate relief with respect to the discriminatory public accommodation practice or breach.

D. Nothing in this section requires a person with a disability to engage in a civil action.

§ 41-1492.09. Enforcement by the attorney general

A. The attorney general shall investigate all alleged violations of this article. These allegations must be filed within one hundred eighty days after the occurrence or the termination of the alleged discriminatory practice, shall be in writing under oath and shall be in such form as the attorney general requires. The attorney general shall undertake periodic reviews of compliance of covered entities under this article. If the attorney general concludes at any time after the filing of a complaint of alleged violation, or as a result of a periodic compliance review, that prompt judicial action is necessary to carry out the purpose of this article, the attorney general may file a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint or compliance review. If, after investigation, the attorney general determines that reasonable cause exists to believe this article is being violated, the attorney general shall attempt for a period of not more than thirty days to effectuate a conciliation agreement. If no conciliation agreement has been reached after thirty days, the attorney general shall file a civil action in an appropriate court. If the attorney general determines that no reasonable cause exists to believe that a violation of this article has occurred or is about to occur, the attorney general shall promptly dismiss the complaint and give written notice of the dismissal to the complainant and the person or entity complained against. If the attorney general finds reasonable cause to believe that a party has breached a conciliation agreement, the attorney general shall file a civil action for enforcement of the agreement.

B. In any civil action under this article the court:

1. May grant any equitable relief that the court considers to be appropriate, including, to the extent required by this title:

(a) Granting temporary, preliminary or permanent relief.

(b) Providing an auxiliary aid or service, a modification of a policy, practice or procedure or an alternative method.

(c) Making facilities readily accessible to and usable by individuals with disabilities.

2. May award such other relief as the court considers appropriate, including monetary damages to aggrieved persons. In this paragraph "monetary damages" and "such other relief" do not include punitive damages.

C. In an action brought by the attorney general, the court, to vindicate the public interest, may assess a civil penalty against the covered person or entity in an amount of not more than:

1. Five thousand dollars for a first violation.
2. Ten thousand dollars for any subsequent violation.

D. For purposes of subsection C, in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered person or entity has engaged in more than one discriminatory act shall be deemed a single violation.

E. In a civil action, when considering what amount of civil penalty, if any, is appropriate, the court shall give consideration to any good faith effort or attempt to comply with this article by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

F. In any action or proceeding under this section, the court may allow the prevailing party, other than the attorney general, reasonable attorney fees as part of the costs.

G. If appropriate, and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials and arbitration, is encouraged to resolve disputes arising under this article.

§ 41-1492.10. Prohibition against retaliation and coercion

A. No person may discriminate against any individual because the individual has opposed any act or practice made unlawful by this article or because the individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this article.

B. It is unlawful to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, for having exercised or enjoyed or on account of his having aided or encouraged any other individual in the exercise or enjoyment of any right granted or protected by this article.

§ 41-1492.11. Examination and courses

Any person that offers examinations or courses related to applications, licensing, certification or credentialing for secondary or postsecondary education, professional or trade purposes shall offer these examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for these individuals.

§ 41-1492.12. Interpretation of disability and substantially limits; definitions

A. A person shall define and construe a disability in favor of broad coverage of individuals under this article to the maximum extent permitted by the terms of this article.

B. A person shall interpret substantially limits consistently with the findings and purposes of the ADA amendments act of 2008 (P.L. 110-325; 122 Stat. 3553).

C. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

D. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

E. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as:

1. Medication, medical supplies, equipment or appliances, low-vision devices, excluding ordinary eyeglasses or contact lenses, prosthetics, including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices or oxygen therapy equipment and supplies.

2. Use of assistive technology.

3. Reasonable accommodations or auxiliary aids or services.

4. Learned behavioral or adaptive neurological modifications.

F. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

G. For the purposes of this section:

1. "Low-vision devices" means devices that magnify, enhance or otherwise augment a visual image.

2. "Ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error.

Arizona Administrative Code, Title 10 , Chapter 3, Article 4

ARTICLE 4. THE ARIZONANS WITH DISABILITIES ACT

R10-3-401. Definitions

The following terms used in this Article or in the materials incorporated by reference in this Article have the following meaning:

1. “2010 Standards” means for:
 - a. Public entities, appendices B and D to 36 CFR 1191 (2009) and 28 CFR 35.151 (2011).
 - b. Places of public accommodation and commercial facilities, appendices B and D to 36 CFR 1191 (2009) and 28 CFR 36.401 through 36.406 (2011).
2. “Act” or “the Act” means the “Arizonans with Disabilities Act” or “AzDA,” A.R.S. § 41-1492 et seq.
3. “Assistant Attorney General” means the “Arizona Assistant Attorney General.”
4. “Attorney General” means the “Arizona Attorney General.”
5. “National” means “State of Arizona.”
6. “Respondent” means a person, public entity, commercial facility, or public accommodation against whom a complaint has been filed alleging a violation of the Arizonans with Disabilities Act.

R10-3-402. Nondiscrimination on the Basis of Disability by Specified Public Transportation

Private entities that are owners and operators of specified public transportation shall comply with the provisions of Appendices B and D to 36 CFR 1191 (2009), as modified by Appendix F to 36 CFR 1191 (2009), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Arizona Attorney General Civil Rights Division and the United States Department of Justice Civil Rights Division, Disability Rights Section - NYA, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

Private entities that are owners and operators of specified public transportation also shall comply with the provisions of 49 CFR 37.5, 37.7(a), 37.9(a) through (c), 37.21(a)(2) through (3), 7.23(b) and (d), 37.25(a), 37.27 through 37.29, 37.37(a) through (f) and (h), 37.45, 37.49, 37.51(a) through (b), 37.55 through 37.57, 37.101 through 37.107, 37.161, 37.165 through 37.173, 37.187 through 37.189, 37.197, 37.201 through 37.211 and Appendix A to Part 37 (2010), and 49 CFR 38.1, the first sentence of 38.2, 38.4, 38.21 through 38.161, 38.171(a) through (b), 38.173 through 38.175, 38.179, and the Figures to Part 38 (2010), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file

with the Office of the Arizona Attorney General Civil Rights Division and the United States Department of Transportation, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.

R10-3-403. Nondiscrimination on the Basis of Disability by Public Entities

Public entities shall comply with the 2010 Standards and the provisions of 28 CFR 35.130(b)(4), 35.133, 35.135, 35.136, 35.137, 35.150, and 35.163 (2011), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Attorney General Civil Rights Division and the United States Department of Justice Civil Rights Division, Disability Rights Section - NYA, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

R10-3-404. Nondiscrimination on the Basis of Disability by Places of Public Accommodation and in Commercial Facilities

Places of public accommodations and commercial facilities shall comply with the 2010 Standards and the provisions of 28 CFR 36.101 through 36.104, 36.201 through 36.206, 36.208, 36.211, 36.301 through 36.311, and 36.507 (2011), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Attorney General Civil Rights Division and the United States Department of Justice Civil Rights Division, Disability Rights Section - NYA, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

R10-3-405. Complaints

A. Any person may file a complaint alleging discrimination on the basis of disability in accordance with the provisions of this Article. The complaint may be filed with the Attorney General no later than 180 days after an alleged discriminatory act or practice in violation of the Act or this Article. The complaint may be filed with the assistance of any person or organization authorized to act on behalf of the complaining person.

B. A complaint may be filed against any person alleged to be engaged, to have engaged, or about to be engaged, in a discriminatory act or practice in violation of the Act or this Article.

C. A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to the accessibility of any public building, public accommodation, commercial facility, or public transportation service, if that person, acting within the scope of their authority as an employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a violation of the Act or this Article.

D. A person may file a complaint in person with, or by mail to: Attorney General, Civil Rights Division, 1275 West Washington, Phoenix, Arizona 85007; or Attorney General, Tucson Office, Civil Rights Division, 402 Congress West, Tucson, Arizona 85701; or such alternate or additional offices as the Attorney General may establish.

E. A person may provide information stating a violation of the Arizonans with Disabilities Act by telephone to the Attorney General. The Attorney General shall reduce the information provided by telephone to writing on a complaint form and send the form to the complaining person to be signed and affirmed.

F. Each complaint must be in writing and shall be signed and affirmed by the complaining person filing the complaint. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct".

G. The Attorney General shall accept any written statement which substantially sets forth the allegations of a discriminatory act or practice under the Arizonans with Disabilities Act. Personnel in the Civil Rights Division shall provide appropriate assistance in filling out complaint forms and in filing a complaint.

H. Each complaint shall contain substantially the following information:

1. The name and address of the complaining person;
2. The name and address of the respondent, if available;
3. A description and the address of the public entity, commercial facility, public accommodation or specified public transportation which is involved, if available;
4. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory act or practice.

I. A complaint is filed when it is received by the Attorney General's Office.

J. A complaint is timely filed if within the 180-day period for the filing of complaints, written information identifying the parties and describing generally the alleged discriminatory act or practice is filed as provided in R10-3-405(D) and (E).

K. Where a complaint alleges a discriminatory act or practice that is continuing, the complaint will be timely if filed within 180 days of the last alleged occurrence of that practice.

L. Failure to file an administrative complaint pursuant to this Section does not prevent an aggrieved person from bringing a civil action in Superior Court pursuant to A.R.S. § 41-1492.08.

R10-3-406. Amendment of Complaints

A. Complaints may be amended at any time during the pendency of the investigation. Amendments may be used:

1. To cure technical defects or omissions, including failure to sign or affirm a complaint;
2. To clarify or add to the allegations in a complaint; or

3. To join additional or substitute respondents.

B. Except for the purposes of notifying respondents under R10-3-408, amended complaints shall relate back to the original filing date.

R10-3-407. Notification of the Complaining Person

Upon the filing of a complaint, the Attorney General shall serve a notice upon each complaining person on whose behalf the complaint was filed. The notice shall:

1. Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing;

2. Include a copy of the complaint;

3. Advise the complaining person of the time limits applicable to complaint processing and of the procedural rights and obligations of the complaining person under this Article;

4. Advise the complaining person of their right to commence a civil action under A.R.S. § 41-1492.08 in an appropriate court, not later than 2 years after the occurrence or termination of the alleged discriminatory act or practice or the breach of a conciliation agreement entered into under this Article; and

5. Advise the complaining person that retaliation against the complaining person or any other person because of the filing of a complaint or because the person testified, assisted, or participated in an investigation or conciliation under this Article, is a discriminatory act or practice that is prohibited by A.R.S. § 41-1492.10.

R10-3-408. Notification of Respondent

A. Within 20 days of the filing of a complaint or the filing of an amended complaint, the Attorney General shall serve a notice on each respondent. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation as a person who is alleged to be engaged, to have engaged, or about to engage in the discriminatory act or practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person.

B. The notice shall:

1. Identify the alleged discriminatory act or practice upon which the complaint is based, and include a copy of the complaint;

2. State the date that the complaint was accepted for filing;

3. Advise the respondent of the time limits to file a response and of the procedural rights and obligations of the respondent;

4. Advise the respondent of the complaining person's right to commence a civil action under the Act in an Arizona Superior Court at any time within 2 years after the occurrence or termination of the alleged discriminatory act or practice.

5. If the person is not named in the complaint, but is being joined as an additional or substitute respondent, explain the basis for the Attorney General's belief that the joined person is properly joined as a respondent.

6. Advise the respondent that retaliation against any person because the person made a complaint or testified, assisted, or participated in an investigation or conciliation under this Section, is a discriminatory act or practice that is prohibited under A.R.S. § 41-1492.10.

R10-3-409. Answer to a Complaint

A. The respondent may file an answer not later than 10 days after receipt of the notice described in R10-3-408. The answer shall be signed and affirmed by the respondent. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct."

B. An answer may be amended at any time during the pendency of the investigation.

R10-3-410. Investigations

A. Upon the filing of a complaint, the Attorney General shall initiate an investigation to:

1. Obtain information concerning the events or transactions that relate to the alleged discriminatory act or practice identified in the complaint.

2. Document policies or practices of the respondent involved in the alleged discriminatory act or practice raised in the complaint.

3. Develop factual data necessary for the Attorney General to make a determination whether reasonable cause exists to believe that a discriminatory act or practice has occurred or is about to occur, and to take other actions provided by A.R.S. § 41-1492.09.

B. Issuance of interrogatories. During the course of investigation, any member of the Attorney General's Office may cause to be issued interrogatories upon any party or witness to the proceedings.

1. Interrogatories issued pursuant to this provision shall require that the person addressed answer the interrogatories under oath.

2. Interrogatories issued pursuant to this provision shall be answered and returned to the Attorney General's Office within 14 days of receipt of the interrogatories.

3. Any person served with interrogatories issued pursuant to this provision may request of the Attorney General's Office a reasonable extension of time in which to answer the interrogatories. In computing any time period under this provision, the computation shall be governed by Rule 6A, Arizona Rules of Civil Procedure, A.R.S. Volume 16.

C. Taking of Testimony -- Mechanical Recording. A taking of testimony pursuant to R10-3-405(F)(4) may be recorded by other than stenographic means, including, but not limited to, tape recording.

R10-3-411. Reserved

R10-3-412. Conciliation

A. In conciliating a complaint, the Attorney General shall attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violation of the rights of the aggrieved person, and take action that will assure the elimination of discriminatory acts or practices, or their prevention or recurrence.

B. Where the rights of the complaining party and the respondent can be protected, the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation.

C. The terms of a conciliation agreement shall be in writing. The conciliation agreement shall seek to protect the interest of the complaining person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in A.R.S. § 41-1492.09(B). The provisions that may be sought for the vindication of the public interest are described in A.R.S. § 41-1492.09(C).

D. A conciliation agreement shall be executed by the respondent, the complaining person, and the Attorney General. The Attorney General shall approve a conciliation agreement and shall execute the agreement, only if:

1. The complaining person and the respondent agree to the relief accorded the aggrieved person; and

2. The provisions of the agreement will adequately vindicate the public interest.

E. The Attorney General may file a civil action under A.R.S. § 41-1492.09 if the complaining person and the respondent have executed a conciliation agreement that has not been approved by the Attorney General.

F. The following types of relief may be sought (without limitation) for complaining persons in conciliation:

1. Monetary relief in the form of damages, including compensatory damages and attorney fees; and

2. Equitable relief including but not limited to the provision of an auxiliary aid or service, modification of a policy, practice or procedure, and an order to alter facilities to make these facilities readily accessible to and usable by individuals with disabilities to the extent that alteration is required by A.R.S. § 41-1492.02.

G. The provisions which may be sought for vindication of the public interest (without limitation) include:

1. Elimination of discriminatory acts or practices, procedures, policies, and rules;
2. Prevention of future discriminatory acts or practices;
3. Remedial affirmative action activities to overcome discriminatory acts or practices;
4. Reporting requirements;
5. Monitoring and enforcement activities; and

6. Civil penalties against the covered person or entity in an amount of not more than \$5,000.00 for a 1st violation and \$10,000.00 for any subsequent violation.

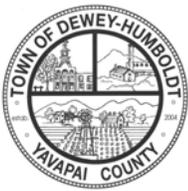
H. The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in R10-3-412(G) and (H). The complaining person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.

I. The Attorney General shall terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with the Attorney General, or if the Attorney General finds, for any reason, that voluntary agreement is not likely to result.

J. Where the complaining person has commenced a civil action seeking relief from the alleged discriminatory act or practice, and the trial in the action has commenced, the Attorney General will terminate conciliation unless the court specifically directs the Attorney General to continue conciliation.

K. Except as otherwise provided by the Act or this Section, nothing that is done in the course of conciliation under this Section shall be made public without the written consent of the persons concerned.

L. The Attorney General has authority to review compliance with the terms of any conciliation agreement and shall file a civil action pursuant to A.R.S. § 41-1492.09, if there is reasonable cause to believe that a respondent has breached a conciliation agreement.



TOWN OF DEWEY-HUMBOLDT

"Arizona's Country Town"

**Reasonable Accommodation
Request Form**
Community Development
P.O. Box 69
Humboldt, AZ 86329

www.dhaz.gov

Phone: 928-632-7362, Fax: 928-632-7365

The Town Zoning Code and Federal & State laws define a person with a disability/handicap as:

"Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment."

The Town of Dewey-Humboldt, in an effort to provide handicapped persons as defined above the same opportunities for housing and land use as other persons who are not handicapped, has developed this process for requesting reasonable accommodations to the requirements of the Zoning Code.

Applicants shall submit to the Zoning Administrator a completed written request for accommodation. The request shall contain sufficient facts to allow Zoning Administrator to make an individualized determination of the person's needs, to address the Town's safety and welfare concerns, and to assure compliance with the Town's Zoning Code except to the extent of an approved accommodation.

- **Description of the reasons an accommodation is requested. Include a sufficient description of your impairment and limitations on your ability to comply with the Zoning Code to enable the Zoning Administrator to make a determination regarding accommodation.**

- **Description of the accommodation being requested. List the specific Zoning Code requirement that you are requesting be adjusted to accommodate your handicap.**

- **Period for which accommodation is being requested:**

Start Date: _____ End Date: _____

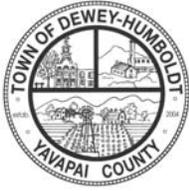
The Zoning Administrator may request additional information, either from you or your health provider in order to determine what accommodation is reasonable.

Approved: _____ Denied: _____ Alternative Accommodation Approved: _____

Zoning Administrator

Date

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TOWN OF DEWEY-HUMBOLDT
P.O. BOX 69
HUMBOLDT, AZ 86329
Phone 928-632-7362 ▪ Fax 928-632-7365

TOWN COUNCIL STUDY SESSION

November 10, 2015, 2:00 p.m. Town Council Meeting Chambers

Agenda Item: # 3.2. Proposed Animal Ordinances

To: Mayor and Town Council Members

From: Steven Brown, Community Planner/ Code Officer

Yvonne Kimball, Town Manager

Date submitted: November 4, 2015

Summary:

Town Council and the community have been discussing animal related issues for some time. When the review began, it was intended to resolve some inconsistency in the town codes and clarify some needed definitions. Throughout the review, community outreach meetings were held. Public input was received.

After several months' effort, some amendments to Code Section 90 Animals and Section 153 Land Use were proposed in the form of ordinances. Some highlights are as follows:

Town Code Section 90:

The proposed amendments to Town Code Section 90 provides for the handling of problem animals, and provides that the County Sheriff's Office is the primary authority for enforcement of:

- Farm Animals Running at Large
- Dogs Running at Large
- Biting Animals
- Control of Dangerous Animals

There is also a new section that establishes maintenance and nuisance standards for animals, based on health and safety concerns. It requires that animals and fowl be maintained in a manner not to unreasonably interfere with the use and enjoyment of the properties of others. These amendments anticipate that enforcement authority for the maintenance and nuisance complaints received by the Town would be Town Code Enforcement Officer.

Zoning Code Section 153:

The proposed amendments to the Zoning Code Section 153 provides new definitions for:

- Exotic Wildlife as: those not native to North America
- Kennel as: Any structure, land or combination thereof, used, designed, or arranged for the boarding or breeding of animals or fowl for a fee, or other commercial purpose.
- Farm Animal as: Horses, cattle, bison, sheep, goats, rabbits, chickens, turkeys, geese, ducks and pigeons.

There is a new section regarding kennels that provides for the continuation of those in existence for an as yet unspecified time. Other than those pre-existing uses, kennels would not be permitted except on properties in excess of 70,000 sq. ft.

PRIVILEGED
COUNSEL - CLIENT

CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.

MEMORANDUM

TO: Ms. Yvonne Kimball, Town Manager, Town of Dewey-Humboldt
FROM: Susan D. Goodwin, Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.,
Town Attorneys
DATE: September 8, 2015
RE: Animal Ordinances – Amendments to Town Code and Zoning Code

Enclosed are the two ordinances we have discussed related to animals in the Town. One ordinance amends the Town Code and the other amends the Zoning Code. The changes to the existing code provisions are described below.

Amendment to Town Code. This ordinance is the most extensive. However, most of the changes involve reorganization of Title IX, Section 90 to make it easier to read.

- § 90.01 Definitions: Definitions were located in three sections of Section 90. We moved all definitions to this section. Instead of defining "Livestock", we used the broader term "Farm Animals", because in our discussions there were concerns about other animals and fowl that are not livestock. Note that there had been some discussion about including chinchillas, kangaroos, wallabies, ostriches, emus, llamas and alpacas in the definition, but because these seem not to be a problem, those were deleted following our discussion last week.
- § 90.02 General Provisions: Paragraph D was moved from § 90.31. This paragraph prohibits an owner from allowing a farm animal to run at large.
- Enforcement Regarding Dogs Running At Large: Moved to § 90.04.
- Biting Animals: Old § 90.05 was moved to the sections on Vicious and Biting Animals.
- Release of Impounded Dog: Old § 90.06 was moved to new § 90.05 and combined with provisions on release of farm animals.
- § 90.16 Determination of Town Magistrate: New provisions were added to address how a dangerous animal violation is brought before the Town Magistrate.
- Livestock Roaming at Large: Old § 90.31 is moved to § 90.02D.

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- Investigation and Enforcement: Some of old § 90.32 is moved to § 90.98 Enforcement and § 90.04 Enforcement – Running at Large.
- Payment of Citation in Lieu of Penalties: Moved to § 90.98.
- Maintenance; Nuisance: This is a new section establishing maintenance standards for animals, based on health and safety concerns. It requires that animals and fowl be maintained in a manner not to unreasonably interfere with the use and enjoyment of the properties of others. This section includes (i) requirements for pens, stalls and similar facilities, (ii) removal of animal manure and droppings, (iii) requirements for watering tanks, (iv) prohibition of accumulation of putrescible materials, (v) prohibition of frequent or habitual howling and barking.
- Enforcement: This is a new section related to enforcement and how complaints are filed. It provides that the enforcement officer for purposes of this section is the Town Code Enforcement Officer (rather than the County Sheriff). It authorizes the enforcement officer to file complaints and sets forth penalties.

Amendment to Zoning Code.

- § 153.005 Definitions: Definitions of “Exotic Wildlife” and “Kennel” are added and the definition of “Farm Animal” is amended to conform to the Town Code amendment.
- § 153.005 R1L District: A new section regarding kennels is added. Kennels in existence prior to a certain date (not yet determined) would be permitted, even if the kennels are not legal non-conforming uses. The owner of the kennel would have a specific period of time after the ordinance is adopted to file with the enforcement officer evidence of the pre-existing use. Other than those pre-existing uses, kennels would not be permitted except on lots at least 70,000 square feet.
- § 153.042 C1 District: Kennels would be permitted.
- § 153.046 M1 District: Kennels would be permitted.
- § 153.066 Accessory Uses and Structures: A person who has exotic wildlife must comply with state regulations. The “Allowed Animal and Fowl Chart” is amended for consistency with the Town Code amendment.

SDG/

cc: Honorable Terry Nolan, Mayor (without Enclosures)

ORDINANCE No. _____

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, COUNTY OF YAVAPAI, ARIZONA, AMENDING THE TOWN OF DEWEY-HUMBOLDT, ARIZONA CODE OF ORDINANCES, TITLE IX GENERAL REGULATIONS, CHAPTER 90 ANIMALS RELATED TO ANIMAL CONTROL, REGULATION OF DOGS, DANGEROUS AND BITING ANIMALS, LIVESTOCK, MAINTENANCE STANDARDS FOR ANIMALS AND ENFORCEMENT; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR PENALTIES

Be it ordained by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, as follows:

Section I. In General

The Town of Dewey-Humboldt, Arizona Code of Ordinances, Title IX Administration, Chapter 90 Animals, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

ANIMAL CONTROL

§ 90.01 DEFINITIONS

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AT LARGE. Being neither confined by an enclosure nor an electronic fence capable of restraining the animal, nor physically restrained on a leash.

DANGEROUS ANIMAL. ANY ANIMAL THAT BITES WITHOUT PROVOCATION, IS KNOWN TO HAVE A HISTORY, TENDENCY OR DISPOSITION TO BITE, OR KILLS OR CAUSES INJURY, INCLUDING INJURY TO DOMESTICATED ANIMALS.

DOG. A member of the canis lupis familiaris and domesticated wolves and offspring of dogs cross-bred with wild animals or domesticated wolves.

ENFORCEMENT OFFICER. Any person responsible for the enforcement of this subchapter and the regulations promulgated hereunder.

FARM ANIMALS. HORSES, CATTLE, BISON, SHEEP, GOATS, RABBITS, CHICKENS, TURKEYS, PHEASANTS, GEESE, DUCKS, PIGEONS, PEACOCKS,

OWNER. Any person owning, possessing, harboring or maintaining a dog OR FARM ANIMAL, or any persons acting for, or in the place of, the owner, or having charge of, or having taken charge of, a dog OR FARM ANIMAL.

§ 90.02 GENERAL PROVISIONS.

(A) No dog shall be at large except as provided herein. Dogs shall be confined within a suitable enclosure capable of restraining the animal or otherwise physically restrained to prevent entry of dogs on public or private property other than the owner's, or on a leash not to exceed six feet in length and of sufficient strength to control the dog.

(B) Any dog over the age of four months shall wear a collar or harness to which is attached a valid rabies tag. Dogs shall not be required to wear a collar or harness with a valid rabies tag attached while being used for control of livestock FARM ANIMALS, while being used or trained for hunting, while being exhibited or trained at a kennel club event, while engaged in races approved by the Arizona Racing Commission or while being transported to and from such events, provided that they are properly vaccinated and controlled.

(C) It shall be unlawful for an owner or any other person or designated responsible person to maintain a dog having a propensity to THAT excessively barkS, howlS or otherwise disturbS the peace and quiet of any town resident.

(D) IT SHALL BE UNLAWFUL FOR THE OWNER OF FARM ANIMALS, A PERSON ACTING FOR THE OWNER OF FARM ANIMALS OR A PERSON EXERCISING CONTROL OVER FARM ANIMALS TO PERMIT SUCH FARM ANIMALS TO RUN AT LARGE WITHIN THE CORPORATE LIMITS OF THE TOWN. FARM ANIMALS ROAMING AT LARGE WITHIN THE CORPORATE LIMITS OF THE TOWN SHALL BE RETRIEVED BY THE OWNER, THE PERSON ACTING FOR THE OWNER OR THE PERSON EXERCISING CONTROL OVER SUCH FARM ANIMALS WITHIN A REASONABLE PERIOD OF TIME AFTER NOTIFICATION. **[MOVED FROM SECTION 90.31 AND CHANGED "LIVESTOCK" TO "FARM ANIMALS".]**

~~90.03 ENFORCEMENT.~~

~~—(A) Any dog, which is running at large, may be apprehended and impounded by the town enforcement officer. The town enforcement officer shall have the right to enter upon private property in order to apprehend any~~

dog that has been running at large, provided the enforcement officer is in reasonable pursuit of the dog.

~~—(B) Town enforcement officers may issue citations to the owner, any other person acting for the owner, or any person exercising control over a dog when a dog is at large. The procedure for the issuance of a notice to appear shall be as provided for peace officers in A.R.S. § 13-3903, except that the enforcement officer shall not make an arrest before issuing the notice. The issuance of citations pursuant to this subchapter shall be subject to the provisions of A.R.S. § 13-3899.~~

~~—(C) Consistent with A.R.S. § 11-1015 and statutes applying to towns, it is unlawful for any person to interfere with the enforcement officer in the performance of his or her duties pursuant to this subchapter. **[MOVED TO SECTION 90.98]**~~

§ 90.04 90.03 EXEMPTIONS - DOGS RUNNING AT LARGE.

(A) A dog may run at large while participating in field trials, obedience classes, kennel club events, organized school or park-sponsored shows, while assisting its owner or being trained in legal hunting or in herding livestock, while assisting a police officer engaged in law enforcement duties, or while assisting its blind or deaf master, so long as sufficient control is exercised and the control would permit immediate leashing of the dog upon any person's reasonable request.

(B) A dog is allowed to occupy vehicles, including truck beds, without restraint, but upon leaving a vehicle or truck bed, it is considered to be at large.

§ 90.05 BITING ANIMALS.

~~—(A) The procedures set forth in Arizona Revised Statutes shall be followed for biting animals. **[MOVED TO DANGEROUS ANIMALS SECTION]**~~

~~—(B) Domesticated wolves and offspring of domestic animals bred with wild animals or domesticated wolves shall be considered wild animals consistent with the provisions of A.R.S. § 11-1014c. **[WRONG CITE. UNNECESSARY.]**~~

90.04 ENFORCEMENT- RUNNING AT LARGE.

(A) ANY DOG OR FARM ANIMAL, WHICH IS RUNNING AT LARGE, MAY BE APPREHENDED AND IMPOUNDED BY THE ENFORCEMENT OFFICER. THE ENFORCEMENT OFFICER SHALL HAVE THE RIGHT TO ENTER UPON PRIVATE PROPERTY IN ORDER TO APPREHEND ANY DOG OR FARM ANIMAL THAT HAS BEEN RUNNING AT LARGE, PROVIDED THE ENFORCEMENT OFFICER IS IN REASONABLE PURSUIT OF THE DOG OR FARM ANIMAL.

(B) ENFORCEMENT OFFICERS MAY ISSUE CITATIONS TO THE OWNER, ANY OTHER PERSON ACTING FOR THE OWNER, OR ANY PERSON EXERCISING CONTROL OVER A DOG OR FARM ANIMAL WHEN A DOG OR FARM ANIMAL IS AT LARGE. THE PROCEDURE FOR THE ISSUANCE OF A NOTICE TO APPEAR SHALL BE AS PROVIDED FOR PEACE OFFICERS IN A.R.S. § 13-3903, EXCEPT THAT THE ENFORCEMENT OFFICER SHALL NOT MAKE AN ARREST BEFORE ISSUING THE NOTICE. THE ISSUANCE OF CITATIONS PURSUANT TO THIS SUBCHAPTER SHALL BE SUBJECT TO THE PROVISIONS OF A.R.S. § 13-3899.

(C) IF FARM ANIMALS ARE RUNNING AT LARGE, THE COSTS OF ENFORCEMENT SHALL BE BORNE BY THE OWNER OF THE FARM ANIMALS.

~~§ 90.06~~ 90.05 RELEASE OF IMPOUNDED DOG OR FARM ANIMAL.

(A) ANY PERSON REQUESTING THE RELEASE OF AN IMPOUNDED DOG SHALL PROVIDE PROOF OF ANTI-RABIES VACCINATIONS, OR SHALL OBTAIN ANY APPLICABLE VACCINATION AND SHALL PAY FOR THE COSTS OF IMPOUNDMENT. PROOF OF OWNERSHIP OF THE DOG MAY BE REQUIRED PRIOR TO RELEASE.

(B) ANY IMPOUNDED DOG OR FARM ANIMAL WHICH IS NOT CLAIMED WITHIN 72 HOURS SHALL BE DEEMED ABANDONED. ENFORCEMENT OFFICERS MAY TAKE POSSESSION OF ABANDONED DOGS OR FARM ANIMALS AND MAY PLACE THE DOG OR FARM ANIMAL FOR SALE OR MAY DISPOSE OF THE DOG OR FARM ANIMAL IN A HUMANE MANNER. ANY PERSON PURCHASING AN ABANDONED DOG SHALL OBTAIN APPLICABLE ANTI-RABIES VACCINATIONS AND PAY THE APPLICABLE AND IMPOUNDMENT FEES. ***[MOVED FROM SECTION 90.06 AND ADDED FARM ANIMALS.]***

VICIOUS DANGEROUS AND BITING ANIMALS

~~§ 90.15~~ DEFINITIONS.

~~For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning:~~

~~***DANGEROUS*** or ***VICIOUS ANIMAL***. Any animal that bites without provocation, is known to have a propensity HISTORY, tendency or disposition to bite, or kills or causes injury, including injury to domesticated animals. ***[MOVED TO SECTION 90.01 AND RE-DEFINED AS "DANGEROUS ANIMAL"]***~~

§ 90.16 DETERMINATION OF TOWN MAGISTRATE.

(A) IF THE ENFORCEMENT OFFICER HAS REASON TO BELIEVE AN ANIMAL IS A DANGEROUS ANIMAL, HE MAY FILE A PETITION WITH THE TOWN'S MAGISTRATE COURT FOR A DETERMINATION THAT THE ANIMAL IS DANGEROUS AS DEFINED IN SECTION 90.01.

(B) THE TOWN'S MAGISTRATE SHALL NOTIFY THE OWNER OF THE ANIMAL OF THE DATE, TIME AND PLACE OF A HEARING FOR A DETERMINATION OF A DANGEROUS ANIMAL.

(C) Following a THE hearing, the Town Magistrate may declare an THE animal to be dangerous ~~or vicious if the animal is found to have exhibited a pattern of aggressive behavior which threatens the safety or well-being of persons or domesticated animals, or has caused injury, reasonable apprehension of such injury, or intimidation to any person~~ AS DEFINED IN SECTION 90.01.

§ 90.17 CONTROL OF DANGEROUS ANIMALS.

No person having charge, care, custody or control of an animal determined to be a vicious or dangerous animal shall permit the animal off his or her premises unless the animal is securely restrained.

§ 90.18 KILLING OF DANGEROUS ANIMALS.

Any law enforcement officer is hereby authorized to destroy any animal determined to be a dangerous ~~or vicious~~ animal when immediately necessary to protect any person or property.

§ 90.19 BITING ANIMALS.

The procedures set forth in Arizona Revised Statutes shall be followed for biting animals.

LIVESTOCK

~~§ 90.30 DEFINITIONS.~~

~~For the purpose of this subchapter the following definition shall apply unless the context clearly indicates or requires a different meaning.~~

~~**LIVESTOCK.** Cattle, horses, pigs, sheep, goats, or other similar animals, other than dogs or domestic house cats. **[MOVED TO SECTION 90.01 AND RE-DEFINED AS "FARM ANIMAL"]**~~

~~§ 90.31 LIVESTOCK ROAMING AT LARGE.~~

~~It shall be unlawful for the owner of livestock, a person acting for the owner of livestock or a person exercising control over livestock to permit such livestock to roam at large within the corporate limits of the town. Livestock roaming at large within the corporate limits of the town shall be retrieved by the owner, the person acting for the owner or the person exercising control over such livestock within a reasonable period of time after notification. [SEE SECTION 90.02(D)]~~

~~§ 90.32 INVESTIGATION AND ENFORCEMENT.~~

~~Enforcement will only occur upon signed complaint and a preliminary investigation to verify that a violation has in fact occurred. Enforcement of § 90.31 shall be the same as contained in § 90.03 of this chapter. Costs of enforcement shall be borne by the owner of such livestock. Any livestock roaming at large may be impounded by the Enforcement Officer so designated by the town. [FIRST SENTENCE MOVED TO SECTION 90.98. SECOND SENTENCE DELETED AS NOT NECESSARY. THIRD SENTENCE MOVED TO SECTION 90.04.]~~

~~§ 90.33 PAYMENT OF CITATION IN LIEU OF PENALTIES.~~

~~(A) Fines. The fines for violating the provisions of § 90.31 90.05 shall be adopted from time to time by resolution of the Council. Unless the Council determines otherwise, the fines shall be those applicable under § 90.99 of this chapter. Any citation must be paid as stated therein.~~

~~(B) Appearance if fine not paid. Any person charged with a violation of this CHAPTER WHO DOES NOT PAY THE FINE AS PROVIDED IN § 90.31 § 90.33 shall appear in the Magistrate's Court at a date and time set by the Court for disposition in accordance with § 90.99, unless all fines imposed have been paid at least 24 hours in advance of the scheduled court appearance. [MOVED TO NEW SECTION 90.98]~~

MAINTENANCE; NUISANCE

90.50 MAINTENANCE STANDARDS

PREMISES ON WHICH ANIMALS OR FOWL ARE KEPT SHALL BE MAINTAINED IN A MANNER NOT TO UNREASONABLY INTERFERE WITH THE USE AND ENJOYMENT OF THE PROPERTIES OF OTHERS, INCLUDING BUT NOT LIMITED TO COMPLIANCE WITH THE FOLLOWING MAINTENANCE STANDARDS:

(A) ALL ANIMALS AND FOWL AND THE PENS, STALLS, STABLES, YARDS, SHELTERS, CAGES, AREAS, PLACES AND PREMISES WHERE THEY ARE HELD OR KEPT, SHALL BE SO MAINTAINED THAT FLIES, INSECTS, VERMIN, RODENT HARBORAGE, ODORS, PONDED WATER, THE ACCUMULATION OF

MANURE, GARBAGE, REFUSE OR OTHER NOXIOUS MATERIAL DO NOT BECOME A PUBLIC HEALTH NUISANCE.

(B) ANIMAL MANURE AND DROPPINGS SHALL BE REMOVED FROM PENS, STABLES, YARDS, CAGES, AND OTHER ENCLOSURES AT LEAST TWICE WEEKLY AND HANDLED OR DISPOSED OF IN AN APPROVED MANNER FREE OF HEALTH HAZARD OR PUBLIC HEALTH NUISANCE. NOTHING IN THIS SUBSECTION SHALL BE DEEMED TO PROHIBIT THE USE OF ANIMAL MANURE OR DROPPINGS ON ANY FARM, GARDEN, LAWN OR RANCH IN SUCH A MANNER AND FOR SUCH PURPOSES AS ARE COMPATIBLE WITH CUSTOMARY METHODS OF GOOD HORTICULTURE.

(C) WATERING TROUGHS OR TANKS SHALL BE PROVIDED, WHICH SHALL BE EQUIPPED WITH ADEQUATE FACILITIES FOR DRAINING THE OVERFLOW, SO AS TO PREVENT THE PONDING OF WATER, THE BREEDING OF FLIES, MOSQUITOES OR OTHER INSECTS, OR A HEALTH HAZARD.

(D) NO PUTRESCIBLE MATERIAL SHALL BE ALLOWED TO ACCUMULATE ON ANY PREMISES, AND ALL SUCH MATERIAL USED AS FEED WHICH IS UNCONSUMED SHALL BE REMOVED DAILY AND DISPOSED OF BY BURIAL OR OTHER APPROVED MEANS

(E) NO ANIMAL OR FOWL EMIT FREQUENT OR HABITUAL HOWLING, YELPING, BARKING, CROWING OR THE MAKING OF OTHER NOISES.

90.51 NUISANCE PROHIBITED

VIOLATION OF SECTION 90.50 SHALL CONSTITUTE A NUISANCE AND A VIOLATION OF THIS CHAPTER.

ENFORCEMENT

§ 90.98 CITATION ISSUED TO OWNERS

(A) FOR PURPOSES OF THIS SECTION AND § 90.50 , THE ENFORCEMENT OFFICER SHALL BE THE TOWN CODE ENFORCEMENT OFFICER OR DESIGNEE.

(B) IT IS UNLAWFUL FOR ANY PERSON TO INTERFERE WITH THE ENFORCEMENT OFFICER IN THE PERFORMANCE OF HIS DUTIES PURSUANT TO THIS CHAPTER.

(C) ENFORCEMENT WILL ONLY OCCUR UPON SIGNED COMPLAINT AND A PRELIMINARY INVESTIGATION TO VERIFY THAT A VIOLATION HAS IN FACT OCCURRED.

(D) IF THE ENFORCEMENT OFFICER DETERMINES THERE IS PROBABLE CAUSE TO BELIEVE THAT A VIOLATION OF THIS CHAPTER HAS OCCURRED, HE MAY FILE A COMPLAINT IN THE MAGISTRATE COURT AND CAUSE THE COMPLAINT TO BE SERVED ON THE PERSON ALLEGED TO BE VIOLATING THIS CHAPTER. THE CITATION SHALL SET FORTH THE SPECIFIC VIOLATION WITH WHICH THE PERSON IS CHARGED AND THE TIME AND PLACE OF SUCH VIOLATION.

(E) EACH DAY A VIOLATION CONTINUES SHALL CONSTITUTE A SEPARATE OFFENSE.

(F) FINES FOR VIOLATING THE PROVISIONS OF THIS CHAPTER SHALL BE ADOPTED FROM TIME TO TIME BY RESOLUTION OF THE COUNCIL. ANY PERSON CHARGED WITH A VIOLATION OF THIS CHAPTER WHO DOES NOT PAY THE FINE SHALL APPEAR IN THE MAGISTRATE'S COURT AT A DATE AND TIME SET BY THE COURT FOR DISPOSITION IN ACCORDANCE WITH § 90.99, UNLESS ALL FINES IMPOSED HAVE BEEN PAID AT LEAST 24 HOURS IN ADVANCE OF THE SCHEDULED COURT APPEARANCE. **[MOVED FROM SECTION 90.33]**

§ 90.99 PENALTY.

(A) Any person who violates any provision of this chapter for which no penalty is provided shall be subject to the terms of § 10.99.

(B) A person who is convicted of a violation of §§ ~~90.01~~ 90.02 through ~~90.06~~ 90.04 is guilty of a Class 2 misdemeanor. As a minimum penalty, a person convicted hereunder shall pay a fine of not less than \$50, which shall not be suspended unless, at the discretion of the court, that person is ordered to perform and complete a minimum of eight hours of community service.

(C) Any person violating the conditions of §§ ~~90.15~~ 90.17 through ~~90.18~~ or is in charge of a dangerous animal as defined herein, may be fined in the amount OF \$250 and be liable for reimbursement of any costs incurred by law enforcement officials in the exercising of their duties.

(D) A person convicted of violating § ~~90.31~~ 90.02(D) shall be found responsible for a civil code infraction and shall be subject to the civil sanctions on the first offense as set forth in § 10.99 of this code. Thereafter, a violation of § ~~90.31~~ 90.02(D) shall be a CLASS 2 misdemeanor subject to the penalty provisions set forth in § 10.99 of this code. The court may order any

person who violates § 90.31 to pay all expenses related to the impounding of the livestock, including shelter, food, handling, transport and veterinarian care. The court may also order any person who violated this chapter to pay all related court fees or costs or penalties.

Section II. Savings Clause

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance as amended 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 remainder of this Ordinance.

Section III. Repeal of Conflicting Ordinance

All other code provisions, ordinances, or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed as of the effective date hereof.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, this ____ day of _____, 2015, by the following vote:

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this ____ day of _____, 2015.

Terry Nolan, Mayor

ATTEST:

Judy Morgan, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.
Town Attorneys
By Susan D. Goodwin

I, JUDY MORGAN, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. _____ ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF

DEWEY-HUMBOLDT, ARIZONA ON THE ____ DAY OF _____, 2015, WAS POSTED IN
THREE PLACES ON THE ____ DAY OF _____, 2015.

Judy Morgan, Town Clerk

ORDINANCE No. _____

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, COUNTY OF YAVAPAI, ARIZONA, AMENDING THE TOWN OF DEWEY-HUMBOLDT, ARIZONA LAND USE CODE, TITLE XV LAND USE REGULATIONS, CHAPTER 153 ZONING REGULATIONS, SECTIONS 153.05 DEFINITIONS, 153.035 R1L DISTRICT (RESIDENTIAL; SINGLE FAMILY LIMITED), 153.037 RMM DISTRICT (RESIDENTIAL; MULTI-SECTIONAL MANUFACTURED HOUSE), 153.038 R1 DISTRICT (RESIDENTIAL; SINGLE-FAMILY), 153.039 RCU DISTRICT (RESIDENTIAL; RURAL), AND 153.040 R2 DISTRICT (RESIDENTIAL; MULTI-FAMILY) AS THOSE DISTRICTS INCORPORATE THE PERMITTED USES IN R1L DISTRICTS, AMENDING SECTIONS 153.042 C1 DISTRICT (COMMERCIAL; NEIGHBORHOOD SALES AND SERVICES), PARAGRAPH (B), 153.043 C2 DISTRICT (COMMERCIAL; GENERAL SALES AND SERVICES) AND 153.044 C3 DISTRICT (COMMERCIAL AND MINOR INDUSTRIAL) AS THOSE DISTRICTS INCORPORATE THE PERMITTED USES IN C1 DISTRICTS, 153.046 M1 DISTRICT (INDUSTRIAL; GENERAL LIMITED), PARAGRAPH (B)(3), AND 153.066 ACCESSORY USES AND STRUCTURES RELATED TO ANIMAL USES IN R1L DISTRICTS (RESIDENTIAL; SINGLE FAMILY LIMITED), R1 DISTRICT (RESIDENTIAL; SINGLE-FAMILY), C1 DISTRICT (COMMERCIAL; NEIGHBORHOOD SALES AND SERVICES), C2 DISTRICT (COMMERCIAL; GENERAL SALES AND SERVICES) AND C3 DISTRICT (COMMERCIAL AND MINOR INDUSTRIAL), DISTRICT (RESIDENTIAL; SINGLE-FAMILY); PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING PENALTIES

Be it ordained by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, as follows:

Section I. In General

The Town of Dewey-Humboldt, Arizona Land Use Code, Title XV Land Use Regulations, Chapter 153 Zoning Regulations, Sections 153.05 Definitions, 153.036 R1L District (Residential; Single Family Limited), Paragraph (b)(12), 153.037 RMM District (Residential; Multi-Sectional Manufactured House), 153.038 R1 District (Residential; Single-Family) 153.039 RCU District (Residential; Rural), and 153.040 (R2 District (Residential; Multi-Family) as those districts incorporate the permitted uses in R1L Districts; Sections 153.042 C1 District (Commercial; Neighborhood Sales and Services, Paragraph (B), 153.043 C2 District (Commercial; General Sales and Services) and 153.044 C3 District (Commercial and Minor Industrial) as those districts incorporate the permitted uses in C1 Districts; Section

153.046 M1 District (Industrial; General Limited) Paragraph (B)(3), and 153.066 Accessory Uses and Structures Paragraph (F) are hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

§ 153.005 DEFINITIONS.

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given on the following pages. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "person" includes individuals, partnerships, corporations, clubs and associations. The following words or terms when applied to this chapter shall carry full force when used interchangeably: lot, plot, parcel or premises; used, arranged, occupied or maintained; sold or dispensed; construct, reconstruct, erect, place or alter (structurally or otherwise).

* * *

EXOTIC WILDLIFE. ANIMALS, FOWL AND OTHER CREATURES NOT NATIVE TO NORTH AMERICA, REGULATED AS EXOTIC WILDLIFE PURSUANT TO ARIZONA RULES AND REGULATIONS R-12-4-401 THROUGH R-12-4-430.

* * *

FARM ANIMALS. ~~Animals other than household pets that shall, where permitted, be permitted to be kept and maintained for commercial production and sale and/or family food production, education or recreation. FARM ANIMALS are identified as being, e.g., H~~ horses, cattle, BISON, sheep, goats, rabbits, chickens, turkeys, geese, ducks, pigeons,. See also § ~~153.066(E) and (F)~~.

* * *

KENNEL. ANY STRUCTURE, LAND, OR COMBINATION THEREOF, USED, DESIGNED, OR ARRANGED FOR THE BOARDING OR BREEDING OF ANIMALS OR FOWL FOR A FEE, OR OTHER COMMERCIAL PURPOSE.

* * *

PETS (HOUSEHOLD). Dogs, cats, rabbits, birds, pot-belly pigs, FISH and the like. "PETS" ALSO INCLUDES ~~(and other small animals not otherwise classified as EXOTIC WILDLIFE, under 100 pounds), for family use only (noncommercial) with cages, pens and the like.~~

§ 153.036 R1L DISTRICT (RESIDENTIAL; SINGLE FAMILY LIMITED)

Permitted uses for the R1L District (Residential; Single Family Limited to site built structures only) are as follows in this section.

(B)(12) KENNELS THAT WERE IN EXISTENCE PRIOR TO _____. WITHIN NINETY (90) DAYS FOLLOWING THE EFFECTIVE DATE OF THIS ORDINANCE, A PERSON WHO CLAIMS THAT HIS KENNEL WAS IN EXISTENCE PRIOR TO _____ SHALL PRESENT TO THE ENFORCEMENT OFFICER EVIDENCE THAT THE USE WAS IN EXISTENCE PRIOR TO _____. THE ENFORCEMENT OFFICER SHALL MAINTAIN A COPY OF SUCH EVIDENCE. EXCEPT FOR KENNELS IN EXISTENCE PRIOR TO _____, KENNELS ARE NOT PERMITTED IN THE R1L DISTRICT EXCEPT ON LOTS OF NO LESS THAN 70,000 _____ SQUARE FEET.

§ 153.042 C1 DISTRICT (COMMERCIAL; NEIGHBORHOOD SALES AND SERVICES).

Permitted uses for the C1 District (Commercial; Neighborhood Sales and Services) are as follows in this section.

(B)(17) KENNELS

§ 153.046 M1 DISTRICT (INDUSTRIAL; GENERAL LIMITED).

Permitted uses for the M1 District (Industrial; General Limited) are as follows in this section.

(B)(3) Manufacturing, machining, tooling, assembly, fabrication, welding, milling, molding, equipping, decorating, glazing, repairing, servicing, cleaning, winding, printing, publishing, pickling, brewing, distilling, salvage (but not wrecking), equipment, material and dead storage yards, plating and polishing, meat packing (no slaughtering except rabbits and poultry), animal treating,

boarding, breeding and sales KENNELS, warehousing (including elevators), freight yards, circuses and carnivals, race tracks and stadiums; and

§ 153.066 ACCESSORY USES AND STRUCTURES.

(F) EXOTIC WILDLIFE. A PERSON WHO MAINTAINS EXOTIC WILDLIFE ON HIS PROPERTY SHALL COMPLY WITH ALL APPLICABLE STATE REGULATIONS RELATED TO EXOTIC WILDLIFE, IN ADDITION TO THE REQUIREMENTS OF THIS CHAPTER.

(FG) Allowed animal chart.

<i>Allowed Animal AND FOWL Chart</i>	
Type	Animals Allowed
Category A - Dairy cow CATTLE, bison, steer/heifer, horse or other similar size/weight	2 per acre*
Category B - Miniature horse, sheep, goat, or other FARM ANIMALS of similar size/weight	5 per acre*
Category C - Turkeys, geese, pheasants, ducks, pigeons, rabbits, chickens or other similar size/weight toward the total. After one year of age, animal off-spring count as adult animals	8 per acre*
CATEGORY D - EXOTIC ANIMALS WITH STATE PERMIT.	
*And proportionately greater for larger properties	

Section II. Savings Clause

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance as amended 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 remainder of this Ordinance.

Section III. Repeal of Conflicting Ordinance

All other code provisions, ordinances, or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed as of the effective date hereof.

Section IV. Penalties

Any person found responsible for violating any provision of this Ordinance shall be subject to the civil sanctions and habitual offender provisions set forth in Section 10.99 of the Dewey-Humboldt Code of Ordinances.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, this ____ day of _____, 2015, by the following vote:

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this ____ day of _____, 2015.

Terry Nolan, Mayor

ATTEST:

Judy Morgan, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.
Town Attorneys
By Susan D. Goodwin

I, JUDY MORGAN, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. ____ ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, ARIZONA ON THE ____ DAY OF _____, 2015, WAS POSTED IN THREE PLACES ON THE ____ DAY OF _____, 2015.

Judy Morgan, Town Clerk



Leaders at the Core of Better Communities

ARTICLES

It's Your Performance Review. Own It.

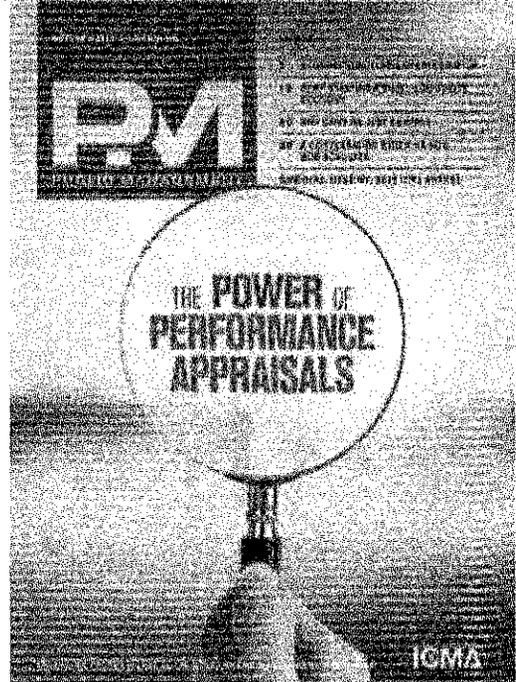


September 25, 2015

If managers are able to step back from the report-card aspect of most appraisal processes and realize that a performance appraisal is a tool to ensure that community goals are being met, then they can appreciate the power of an appraisal, writes Rick Dacri in the October issue of *Public Management (PM)* magazine and the cover story "The Power of Performance Appraisals."

For a positive evaluation process, he recommends these actions:

- Agreement on the how, when, and what of the evaluation process.
- A frank, open dialogue. Good evaluations are conversations, not just forms that are written, read, signed, and forgotten in a file.
- Self-evaluation, when managers take time to both critically evaluate their own performance and that of their organizations.
- Review of current goals and objectives and also establishment of new goals.
- A look forward, not just a look back. One way to guarantee that a manager can get a community to where it wants to go is through professional development.
- Listening and communicating. Managers should both talk and listen to elected officials and vice versa. Communication is key.



Read the cover story to find out more details on forming a good evaluation process and what stumbling blocks can derail the process.

COMMENTS & RATINGS

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A Manager's Performance Appraisal: Prepare With Confidence



by Rick Dacri

Imagine you're responsible for organizing the family vacation. It's all planned, and everyone piles into the car ready to go. From the back seat, you hear: "I want to go to Disney." "No, I want to go to the beach." "No, we always do what you want, let's go camping."

Your partner gently leans over and says: "I want to go for a romantic vacation, without the kids, and by the way, we should fly, not drive." And now, if things couldn't be worse, you know they will all judge you, and the quality of their vacation will be based on your decision.

Crazy? Is this scenario all that unrealistic? In fact, for many, this resembles the life of a local government manager. As one city administrator defined it, "multiple conflicting priorities," topped off with a performance appraisal.

POWERFUL TOOL WITH BENEFITS

As a manager, your job is to carry out the wishes of the governing board. But if you cannot find agreement on where you are going, who is driving, and who is in charge, you are on the road to dysfunctional government and a strained relationship with elected officials.

An evaluation of the manager—a process hated by most and ignored by others—should be an opportunity to both develop a manager's knowledge and move a community forward.

If we are able to step back from the report-card aspect of most appraisal processes and realize that a performance appraisal is simply a tool used by elected officials to ensure that community goals are being met, then one can appreciate the power of this tool.

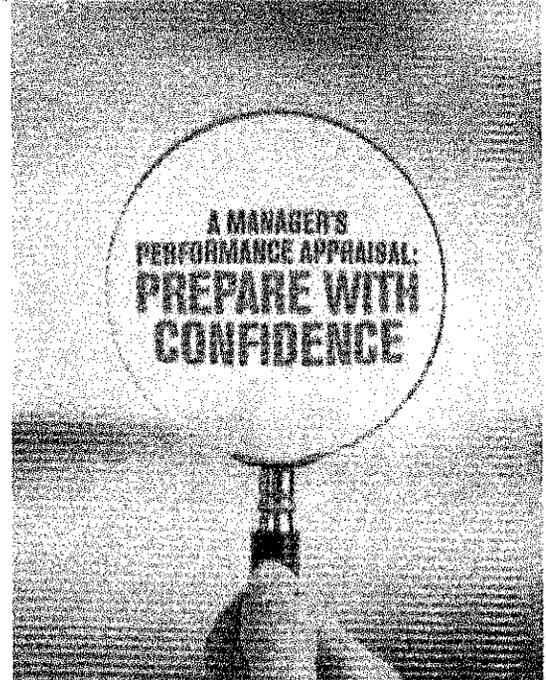
So why doesn't that happen?

One Pennsylvania township has a five-year plan in place that marries its business plan to its strategic and financial plans. The town is run like a private sector business according to its town manager. When the five-person, elected board hired the manager 11 years ago, board members recognized that a professional manager who embraced sound business and financial practices was needed to run their organization.

With a background in accounting, he pushed long-term planning with goal setting, and out of this process came the need for both strategic planning and an evaluation process. Nothing in business works effectively without clear direction and strategy, along with clearly defined metrics to measure progress.

But simply having a business plan does not ensure positive results. These five essential components found in most well-run communities should be present:

- Well-defined mission and vision.
- Clearly defined goals and expectations.
- Defined roles and responsibilities.



- Positive working relationships.
- A method to evaluate the progress and success of the manager.

Mission and vision. Defining who you are, what you believe, and where you are going—all rudiments of an effective strategic plan—is crucial. In one Vermont tourist community, administrators view their town as a business that is dependent on tourism and marketing to visitors, while still focusing on primary and secondary homeowners.

Elected officials always make decisions with an eye on this mission, keeping them focused and forward thinking. Managers and officials must regularly discuss their mission, vision, and strategy, while defining values that they believe, and from which they operate and conduct business. When mired in constant crisis or reacting to the day-to-day issues, communities can sacrifice their future and the opportunities this future presents.

Goal setting. The goal-setting process can be the most dynamic and harmonizing event that managers and governing boards experience. Many communities do it annually, while others do it after each new board is seated.

Here, the board can establish clear expectations and accountability standards for the manager, ensuring that he or she is aligned with the board's interests. Done well, this becomes a vibrant, proactive experience. Without it, people could find themselves sailing on a rudderless ship, destined for disaster.

Clarity of roles. Local governments work best when there is only one manager. Yet too often, councilmembers get confused about their role and think they, too, are the manager. Like the two-headed monsters of Greek mythology, they find themselves moving in different directions. It doesn't work.

Good governance makes good government. One town manager quotes Plato when he discusses governance during board orientations. "To do one's own business and not to be a busybody is justice," which basically means justice is found in fulfilling your own role while not overstepping it.

Taking the time to define roles and adhering to them minimizes problems in the future and is essential to meaningful appraisals.

Positive working relations. I regularly tell people who I work with that results can only occur if there are three elements in place: 1) a positive working relationship between the board and the manager; 2) a shared mission about what the locality is and what the locality wants to accomplish; and 3) a commitment to move forward together in a collegial manner.

With that foundation, communities can progress. But absent any one element, things come tumbling down. Relationships based on trust, respect, and confidence are essential.

Governing and managing are all about the relationship. Managers must know that they have the backing of the elected officials and vice versa.

Evaluation process. Putting in place a progressive process to evaluate the manager allows for healthy discussion; clarification of expectations; refocus of direction, if needed; and open communication. No business relationship can occur without accountability standards, and this is the power of the appraisal process.

WHAT MAKES A GOOD EVALUATION PROCESS?

Agreement on the process. Ideally, the governing board and the manager should come together to decide how to do this, when it should be done, and on what basis the manager will be evaluated.

While many shy away from evaluations, one Connecticut manager built the process into his contract to ensure he had open communication with "his new bosses," to understand their viewpoints, and to make sure he was in sync with each of them.

When I have developed appraisals with managers and governing officials, I have found that simply discussing the process opens lines of communication, breaks down barriers, and often leads to discovering emerging new areas of communality.

More than a form. Good evaluations are simply conversations, not forms. In fact, the forms are often a distraction from what is truly important. A frank open dialogue, with all individuals participating, is much better than including a five-point Likert scale and boxes to check on a form.

Forms are good for clarity and recordkeeping. They make the human resources professionals and lawyers happy, but they can never replace the feedback received during the appraisal interview. Good evaluations occur when people are talking and listening with each other, not when forms are written, read, signed, and forgotten in a file.

Manager self-evaluations. Managers should take time to both critically evaluate their own performance and that of their organizations. Elected officials readily admit that they do not know what managers do each day—and why should they?

It is not their responsibility to monitor everything the manager does. Managers should, however, communicate what they have done and more importantly, what they have accomplished during the period.

After all, they were hired and are being paid for accomplishments, not activities or simply showing up. A pinch of selfless self-promotion is also a good thing.

Review of goals. As noted earlier, this is an ideal time to review progress on the manager's goals and objectives. It is also a period when new goals can be established. Goal setting is the heart of the appraisal process.

In one Connecticut town, every two years, the board, the manager, and the department heads get together for a formal goal-setting session. They incorporate a three-step process that includes:

- Identifying the overarching issues facing the town. The top five umbrella issues nearly always include public safety, quality of life, infrastructure, education, and economic development.
- Breaking down each issue using a modified SWOT analysis and then addressing what they want to focus on and improve upon the next year.
- Coming up with 50 to 100 individual action items, prioritizing them, and then creating a workplan.

The manager and the department heads then allocate responsibilities and time frames for completion. This plan forms the basis for the manager's and the department heads' performance appraisal.

Development of the manager. Having a manager with yesterday's ideas is like eating day-old bread. It won't kill you, but it also won't satisfy your palate.

The demands of running a multimillion-dollar business with staff, equipment, changing technology, constant changes in regulations and legislation, employees, unions, and resident demands requires a manager who is up-to-date, understands best practices, and manages with knowledge and confidence.

Ongoing professional development readies the manager. It must be a requirement of each manager and an essential component to discuss during the review process.

Performance appraisal cannot simply be a look back. What happened yesterday cannot be changed. The review must include a look forward, and one way to guarantee that a manager can get a community to where it wants to go is through professional development.

Managers need continuous skills training, exposure to new ideas and concepts, interaction with other successful managers, knowledge of changes in legislation and regulations, and awareness of emerging trends. Seminars, professional association programs, conferences, and college seminars are essential elements to this development process.

Communication is the key. Whether it is on or off the record, fluid, open, and meaningful dialogue that ensures that everyone is in the loop guarantees success. Managers must talk and listen to the board and vice versa.

The best reviews contain more conversation, with less emphasis on the forms; a clear understanding of the respective roles and responsibilities; well-defined goals and expectations; metrics and timeliness; and genuine respect and trust. When this is present, the appraisal process is working.

POTENTIAL STUMBLING BLOCKS

Unfortunately, too often these stumbling blocks can derail the process:

Politics. As I regularly find out from talking with managers and elected officials across the country, politics and

everything that connotes often poisons the evaluation process. Conflicting agendas, singular motives, scores to settle, or an unwillingness to embrace the community's mission and vision make governing difficult, thwart consensus, and derail the process.

As one Florida councilmember stated: "Agendas by councilors prevent good evaluations." When politics gets in the way, managers become afraid to make bold moves. They fear losing their jobs and become too paralyzed to be effective, and then often shy away from addressing the difficult issues.

Surprises. Surprises should be left for birthday parties, not evaluations. The review process cannot endure many surprises. Issues should be addressed as they occur and not stored in a gunnysack and saved for review time.

The governing board and the manager must always be transparent, open, and forthcoming. Matters that seemingly emerge from left field kill conversation, put individuals on the defensive, and serve no other purpose than to derail the process.

Report-card approach. A review is a development tool. It is a mechanism to plan for the future. It cannot be a merely a grading mechanism that reminds you of your past shortcomings. You can't be effective with a club over your head.

Lack of differentiation between performance and personality. Managers are hired to perform. While getting along and congeniality are important, the more critical piece is getting things done. Having a nice guy who accomplishes little is not an enviable standard.

That said, defining the important traits of a successful manager is important during the hiring process and reinforcing these during the appraisal process is appropriate.

A SUCCESSFUL RELATIONSHIP

Local government management can be difficult and complex. To be successful, the relationship between the manager and elected officials must be open and positive. Each must understand the other's roles and expectations.

The manager's job is to take care of everyone in the organization. Officials expect them to run and grow the business; carry out their mandates; recruit, retain, and develop the internal talent; and prepare the organization for the future.

It is the role of the officials to take care of the manager in a supportive manner. Managers, like any employees, want their basic needs met and when they are not, resentment occurs.

They want a governing board that provides clear expectations and accountability standards, understands managers' needs and expectations, and provides timely performance reviews. Late reviews and salaries that fall below their peers are two areas that cause the greatest resentment resulting in breakdowns in the relations and turnover of managers.

Next vacation, when everyone happily piles into the car and agrees on a destination and driver, then and only then can it be viewed as a positive experience. Managing a city or county requires the same. And when that happens, everyone can enjoy the ride.



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COMMENTS & RATINGS

PRESENT 30.031 B (11):

(11) As the Mayor may deem appropriate, and upon request by an organization or individual, the Mayor may prepare proclamations that identify particular days or events to be of special interest to the town and its citizens.

POSSIBLE ALTERNATIVES:

A. Omit this part of the code entirely

B. Add following verbiage to present code: Prior to the reading of any proclamation, the mayor must insure that the proclamation meets the representation of the community, by prior council consensus. (This could be accomplished on a vote prior to reading or prior approval on a monthly basis during a work study session)

CURRENT CODE:

30.085 REPRESENTING AN OFFICIAL TOWN POSITION.

(A) Town Councilmembers may use their title only when conducting official town business, for information purposes, or as an indication of background and expertise, carefully considering whether they are exceeding or appearing to exceed their authority.

(B) Once the Town Council has taken a position on an issue, all official town correspondence regarding that issue will reflect the Council's adopted position.

(C) In most instances, the Council will authorize the Mayor to send letters stating the town's official position to appropriate legislators.

(D) If a member of the Town Council, including the Mayor, appears before another governmental agency organization to give a statement on an issue affecting the town, the Councilmember should indicate the majority position adopted by the Council. If the Council is divided on an issue, the member should make no statement.

(E) Personal opinions and comments may be expressed only if the Councilmember clarifies that these statements do not reflect the official position of the Town Council.

(F) Any Councilmember, including the Mayor, who has been directed by Council action (either by Council vote or by direction) to represent the town at any meeting of an outside organization and who cannot attend the meeting, shall immediately notify the alternate attendee, who shall attend the meeting. If there is not an alternate or the alternate is not available to attend, the representative shall immediately notify the Mayor and, in the absence of the Mayor, the Vice Mayor, of the attendance conflict.
(Ord. 09-49, passed 4-7-2009; Am. Ord. 13-101, passed 10-1-2013)

CODE ADDITION:

(G) If a member of the Town Council, including the Mayor, appear or are interviewed by any news media, whether it be radio, television, newspaper, or newsletter, the councilmember shall indicate the majority position adopted by council. If a position has not been reached on the subject the councilmember shall indicate that no majority position has been adopted or the council member can give a statement to their own personal view upon reflecting that it is their view only and not that of the town.

4.1. Agenda Item Attachment - Tentative Agenda List

- Town Attorney. [CAARF requested by Mayor Nolan]
- ✦ Request Mayor's attendance at the Rural Transportation Summit. [CAARF requested by Mayor Nolan]
- ✦ Approve Presentation of Brief Update on Yavapai College for November 3rd. [CAARF – Mayor Nolan sponsoring request from Yavapai College-Barbara Robinson)
- ✦ Controversial proclamations must be approved by a majority of the council before they are issued. [CAARF-JH]
- ✦ Whether to support letter to Gov. Ducey regarding Forest and Watershed Restoration. [CAARF requested by Mayor Nolan]

October 27 (tentative) – 2nd meeting survey to determine the questionnaire and next steps

November 3, 2015 Regular Council

- ✦ quarterly public safety report (Judy confirm availability a week before)
- ✦ YC update (continues from the Oct. 20 meeting)
- ~~✦ CDBG engineering design agreement~~
- ✦ YC ED –proposed FY 16 citizen survey questionnaire and next steps (Alex Wright attendance)
- ✦ Amend 30.031 B(12) – CAARF requested by CM Repan
- ✦ Discuss CYMPO representation and possible change in representation – CAARF requested by CM Repan

February 23 survey final result and next steps

November 5, 2015 Planning and Zoning

- ✦ BO presentation on the 2012 I-codes progress (Don Roberts)

November 10, 2015 Work Session Council

- ✦ reasonable accommodations ordinance proposed
- ✦ animal ordinance proposed (Susan, Judge Kelley, Steven, YCSO? Attending)
- ✦ Discussion and consensus on when, how and what process to use for the Town Manager's performance review. [CAARF requested by CM Wright]
- ✦ Discuss amendments to 30.031 B(11) [CAARF requested by CM Repan]
- ✦ Additional verbiage to 30.085. [CAARF requested by CM Repan]

November 17, 2015 Regular session

- ✦ TM report – request from Ufa Superfund Research program regarding a presentation
- ✦ CDBG engineering design agreement (needs NACOG CDBG coordinator to verify, town engineer to fill in details; town attorney to approve)
- ✦ contracts – public defender, prosecutor
- ✦ Judge reappointment (originally appointed on Nov. 17 2009:
Discussion and possible action to continue Catherine Kelley's appointment as Magistrate of Dewey-Humboldt, and set salary and term. The Council may, by majority vote, recess the regular meeting, hold an executive session and then reconvene the regular meeting for discussion and possible action on this item.

Items contained within are tentative in nature. Official meeting agendas are subject to changes without further notices and will be published according to the Open Meeting Law and other applicable codes and regulations.

x.1. Recess into and hold an executive session pursuant to A.R.S. § 38-431.03(A)(1) for discussion or consultation of employment, term and salary of Catherine Kelley for Magistrate.

x.2. Reconvene Regular Meeting.



December 1, 2015 Regular Council

- ~~+~~ contract on call contractor multi-year (Ed) scheduled for Oct. 20
- + mayor annual report on external memberships per ordinance 15-115
- + 2016 meeting dates and holidays
- ~~+~~ Resolution of adopting the updated principles of sound mgt
- + VM Hamilton CARF – regarding Judge anniversary (received 9/28/2015)
- +

December 3, 2015 Planning and Zoning

- + tbd

December 8, 2015 Work Session Council

- + Town website options
- + Deni to financial statement presentation
- + Steven to “municipal bill of rights” implementation overview presentation

December 15, 2015 Regular Council

- + UoA superfund research program presentation (tentative)
- + See above (12/3/2013 last discussion)
- + vice mayor appointment - Town code section 30.031 Vice Mayor appointment
- + Code enforcement activity report (Jan. 2015 to Dec. 2015 with focus on the last quarter) if not December, then in January 2016.
- + General CDBG contract town with the state
- + Update of council appointments to various regional orgs (appointee and alternate appointee)
- + Council policy to annually reappoint the representatives of various regional organizations
- + recognition ~Judy Morgan, 10 years of service for the town (since 12/27/2005); ~ Ed Hanks, 5 year of service since August 10 2010; ~Catherine Kelley 6 years (since 11/17/2009); Therese Christopher 6 years since 9/2010

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