

CHAPTER 1 GENERAL

Article 1-1 HOW CODE DESIGNATED AND CITED

The ordinances embraced in the following chapters and sections shall constitute and be designated “The Code of the Town of Clarkdale, Arizona,” and may be so cited. Such code may also be cited as the “Clarkdale Town Code.”

Article 1-2 CONSTRUCTION OF ORDINANCES

The rules and the definitions set forth in this chapter shall be observed in the construction of this code and the ordinances of the Town unless such construction would be inconsistent with either the manifest intent of the council or the context of this code or the ordinances of the Town.

Article 1-3 DEFINITIONS (1)

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(1) State law reference: For definitions and construction of statutes generally, see Sections 1-211 - 1-215, A.R.S.

Section 1-3-1 General Rule Regarding Definitions

All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

Section 1-3-2 Acts by Agents

When this code or an ordinance requires an act to be done which may by law as well be done by an agent as by the principal, such requirement shall be construed to include all such acts when done by an authorized agent.

Section 1-3-3 Code

The words “the code” or “this code” shall mean “The Code of the Town of Clarkdale, Arizona,” unless the context indicates otherwise.

Section 1-3-4 Council

Whenever the word “Council” is used, it shall be construed to mean the Common Council of the Town of Clarkdale, Arizona.

Section 1-3-5 Day

A “day” is the period of time between any midnight and the midnight following.

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Section 1-3-6 Daytime, Nighttime

“Daytime” is the period of time between sunrise and sunset. “Nighttime” is the period of time between sunset and sunrise.

Section 1-3-7 Department, Board, Commission, Office, Officer, or Employee

Whenever any “department, board, commission, office, officer or employee” is referred to, it shall mean a department, board, commission, office, officer or employee of the Town unless the context clearly indicates otherwise.

Section 1-3-8 Gender; Singular and Plural

Words of the masculine gender include the feminine; words in the singular number include the plural and words in the plural number include the singular.

Section 1-3-9 In the Town

The words “in the town” or “within the town” shall mean and include all territory over which the Town now has, or shall hereafter acquire, jurisdiction for the exercise of its police powers or other regulatory powers.

Section 1-3-10 Joint Authority

All words purporting to give a joint authority to three or more town officers or other persons shall be construed as giving such authority to a majority of such officers or other persons unless it shall be otherwise expressly declared in the law giving the authority.

Section 1-3-11 Month

The word “month” shall mean a calendar month.

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Section 1-3-12 Oath

“Oath” includes affirmation or declaration.

Section 1-3-13 Or, And

“Or” may be read “and,” and “and” may be read “or,” if the sense requires it.

Section 1-3-14 Person

The word “person” shall extend and be applied to the firms, corporations or voluntary associations, as well as to individuals, unless plainly inapplicable.

Section 1-3-15 Personal Property

“Personal property” includes every species of property, except real property as defined in this article.

Section 1-3-16 Preceding, Following

The words “preceding” and “following” mean next before and next after, respectively.

Section 1-3-17 Property

The word “property” shall include real and personal property.

Section 1-3-18 Real Property

Real property shall include lands, tenements and hereditaments.

Section 1-3-19 Shall, May

“Shall” is mandatory and “may” is permissive.

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Section 1-3-20 Shall Have Been

The words “shall have been” include past and future cases.

Section 1-3-21 Signature or Subscription by Mark

“Signature” or “subscription” includes a mark when the signer cannot write, such signer’s or subscriber’s name being written near the mark by a witness who writes his own name near the signer’s or subscriber’s name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.

Section 1-3-22 State

The words “the state” shall be construed to mean the State of Arizona.

Section 1-3-23 Tenant or Occupant

The word “tenant” or “occupant” applied to a building or land shall include any person holding a written or an oral lease or who occupies the whole or part of such building or land, either alone or with others.

Section 1-3-24 Tenses

The present tense includes the past and future tenses, and the future includes the present.

Section 1-3-25 Time-Computation

The time within which an act is to be done as provided in this code or in any order issued pursuant to any ordinance, when expressed in days, shall be computed by excluding the first day and including the last, except that if the last day is a Saturday, Sunday or holiday it shall be excluded; and when such time is expressed in hours, the whole of Saturday, Sunday, or a holiday, from midnight to midnight, shall be excluded.

Section 1-3-26 Time-Reasonable

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In all cases where any section of this code shall require any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall be deemed to mean such time only as may be necessary for the prompt performance of such duty or compliance with such notice.

Section 1-3-27 Town

Whenever the word “town” is used, it shall be construed to mean the Town of Clarkdale, Arizona.

Section 1-3-28 Week

A “week” consists of seven consecutive days.

Section 1-3-29 Writing

“Writing” includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this code, it shall be made in writing in the English language unless it is expressly provided otherwise.

Section 1-3-30 Year

The word “year” shall mean a calendar year, except where otherwise provided.

Section 1-3-31 Violation; Violator

Except for Articles 13-1 through 13-6 of this code, the words “violation” or “violations” mean: (1) any act prohibited or declared unlawful by the code or Arizona criminal or traffic law; or, (2) the failure or refusal to do any act required by the code or Arizona criminal or traffic law; “violator” means a person found by the Magistrate Court to have committed a violation. A violation of Chapter 14 of this code constitutes a civil traffic violation subject to the provisions of Title 28, Arizona Revised Statutes.

Article 1-4 REFERENCE TO CHAPTERS, ARTICLES OR SECTIONS: CONFLICTING PROVISIONS

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- 1-4-1 Additional Rules of Construction
- 1-4-2 References to this Code
- 1-4-3 Conflicting Provisions-Different Chapters
- 1-4-4 Conflicting Provisions-Same Chapter

Section 1-4-1 Additional Rules of Construction

In addition to the rules of construction specified in Articles 1-2 and 1-3, the rules set forth in this article shall be observed in the construction of this code.

Section 1-4-2 References to this Code

All references to chapters, articles or sections are to the chapters, articles and sections of this code unless otherwise specified.

Section 1-4-3 Conflicting Provisions-Different Chapters

If the provisions of different chapters of this code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and question growing out of the subject matter of such chapter.

Section 1-4-4 Conflicting Provisions-Same Chapter

If conflicting provisions are found in different sections of the same chapter, the provision of the section which is last in numerical order shall prevail unless such construction is inconsistent with the meaning of such chapter.

Article 1-5 SECTION HEADINGS

Headings of the several sections of this code are intended as convenience to indicate the contents of the section and shall not be deemed or taken to the titles of such section, nor as any part of the section, nor unless expressly so provided, shall they be so deemed when any of such section,

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including the headings, is amended or reenacted.

Article 1-6 EFFECT OF REPEAL

When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, such repeal shall not be construed to revive such former ordinance, clause or provision, unless it shall be expressly so provided. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect nor any suit, prosecution or proceeding pending at the time of the repeal, for any offense committed under the ordinance repealed.

Article 1-7 SEVERABILITY OF PARTS OF CODE

It is hereby declared to be the intention of the Council that the sections, paragraphs, sentences, clauses and phrases of this code shall be severable, and, if any provision of this code is held unconstitutional for any reason by a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining provisions of the code.

Article 1-8 PENALTY (Revised 10/25/16 by Resolution 1529; Ordinance 376 Effective 10/26/16)

- 1-8-1 Collections; Recovery by Suit
- 1-8-2 Separate Violations
- 1-8-3 Classification of Misdemeanors
- 1-8-4 Enforcement
- 1-8-5 Commencement
- 1-8-6 Service of Citation
- 1-8-7 Appearance; Initial Hearing
- 1-8-8 Failure to Appear; Default Judgement; Failure to Pay
- 1-8-9 Rules of Procedure
- 1-8-10 Appeals
- 1-8-11 Magistrate Court
- 1-8-12 Applicability; Severability; Conflicts; Amended Statutes

Article 1-8 PENALTY

A violation of this code or the Town of Clarkdale Zoning Code may be deemed and brought by the person enforcing or prosecuting the violation on behalf of the Town under Section 1-8-4 as a civil offense, civil traffic violation (if applicable), petty offense, or criminal misdemeanor offense, punishable by one or more of the following penalties for each violation, at the discretion of the Magistrate Court:

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- A. **Civil Fine.** A civil sanction, not to exceed two thousand five hundred dollars (\$2,500); if a specific provision of this code sets a particular minimum, maximum, or range for a civil sanction, that specific provision shall control.
- B. **Jail Time.** For criminal misdemeanor offenses, a sentence of imprisonment for a term up to the maximum limitation set by A.R.S. § 13-707.
- C. **Incarceration Fee.** Along with any sentence of imprisonment, if a person is incarcerated in the Yavapai County jail, the actual expenses incurred by the Town for the person's confinement as determined by the per diem amount charged by Yavapai County at the time of the sentencing for housing a prisoner; this charge may be waived by the Magistrate Court for a person found by the Magistrate Court to be indigent.
- D. **Probation.** By imposing supervised or unsupervised probation up to one year less a day (364 days); such probation may include conditions to be fulfilled during the probation period.
- E. **Criminal Fine.** For criminal misdemeanor or petty offenses, a fine up to the maximum limitation set by A.R.S. § 13-802 plus applicable surcharges.
- F. **Deferral Fee.** By imposing a fee of up to \$1,000 to defer prosecution or enforcement of a violation for a certain period of time, during which the alleged violator shall complete certain conditions requested by the person enforcing or prosecuting the violation on behalf of the Town. This subsection amends Town Resolution 1322, adopted January 26, 2010.
- G. **Court Operation Surcharge.** A fee surcharge set by Arizona law and/or Town Ordinance or Resolution for the operation of the Magistrate Court, including any equipment, software, or service for such operation.
- H. **Community Service.** A sentence of community service of up to 500 hours of community service, to be performed under the direction of and assignment by the Community Development Department or the Magistrate Court. The Magistrate Court may reduce a fine or fee to be paid for a violation by crediting community restitution performed by the violator against the fee or fine, as permitted by A.R.S. § 13-824.
- I. **Restitution.** By requiring restitution be paid to any person, partnership, company, corporation, or other entity, including the Town, suffering economic loss as set forth in A.R.S. § 13-105(16).
- J. **Prosecution and Enforcement Costs.** By imposing a charge for reasonable prosecution or enforcement costs related to prosecuting or enforcing the violation and any fees paid to a public defender appointed for an alleged violator; this charge

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may be waived by the Magistrate Court for a person found by the Magistrate Court to be indigent.

- K. **Time Payment Surcharge.** As permitted by Arizona law, by imposing a surcharge for collecting payments over time for monetary penalties not paid in full on the day penalties are imposed by the Magistrate.
- L. **Abatement; Removal; Correction; Remedy.** By ordering abatement, removal, correction, and/or the remedy of any violation pursuant to the code and/or A.R.S. § 9-499 or other applicable Arizona law. Abatement, removal, correction, and/or remedy may be ordered in addition to any monetary penalties or any other penalty under Article 1-8.

Section 1-8-1 Collections; Recovery by Suit

- A. **Collection.** The Town or the Magistrate Court may refer for collection any delinquent monetary penalties imposed under Article 1-8. Any collection costs or fees or attorneys' fees incurred or reasonably expected to be incurred by the Town are recoverable from the violator and may be added to any balance due from a violator to the Town or the Magistrate Court.
- B. **Civil Suit.** The Town may file or cause to be filed a civil case in a court with jurisdiction to recover the monetary penalties imposed under Article 1-8 and costs or fees under Section 1-8-1(A).
- C. **Non-Exclusive Collection Remedies.** The Town or the Magistrate Court may enforce collection of delinquent fines, fees and penalties as may be provided by law. Any judgment or civil sanction pursuant to this Article may be collected as any other civil judgment.

Section 1-8-2 Separate Violations

Each time or day a violation of this code is committed or permitted to continue shall constitute a separate violation and shall be punishable as a separate violation.

Section 1-8-3 Classification of Misdemeanors

A violation of the code brought as a criminal misdemeanor offense shall be a class 2 misdemeanor unless otherwise specifically designated in the subsection, section, or Article.

Section 1-8-4 Enforcement

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- A. **Persons Authorized to File and Appear.** Except as otherwise restricted by law, any peace officer, Enforcement Officer under Chapter 6, Code Enforcement Officer under Chapter 15, Zoning Official, Building Official, or Community Development Director of the Town, or their authorized designee or representative may file a citation or complaint and appear before the Magistrate Court to enforce any violation as a civil offense or a civil traffic violation (if applicable) and may request any applicable penalty under Article 1-8 for the violation. Only an attorney representing the Town or the State of Arizona on behalf of the Town may prosecute violations as criminal misdemeanor or petty offenses and request the penalties under Article 1-8 specific to criminal misdemeanor or petty offenses.
- B. **Non-Exclusive Remedies.** Nothing contained in this Article shall be construed to require the selection of an exclusive remedy for violations of this code. If an alleged violator fails to comply with any civil enforcement action commenced under this Article, the citation or complaint for the civil violation may be dismissed without prejudice and a citation or complaint for a criminal misdemeanor or petty offense may be filed against the alleged violator. Notwithstanding, a civil enforcement action shall not be a prerequisite to the filing of a criminal charge.

Section 1-8-5 Commencement

- A. **Civil Violations.** To commence enforcement of a civil offense or a civil traffic violation, a citation or complaint shall be filed with the Magistrate Court. The citation or complaint shall be in the form of or substantially similar to the uniform Arizona Traffic Ticket and Complaint form approved by the Supreme Court of Arizona and shall cite to the particular section and subsection applicable to the alleged violation. A citation or complaint may include more than one violation. Each violation shall be deemed a separate offense.
- B. **Criminal Violations.** An attorney representing the Town or the State of Arizona on behalf of the Town may commence prosecution of a criminal misdemeanor or petty offense under the Arizona Rules of Criminal Procedure.
- C. **Optional Notice.** Before commencing enforcement or prosecution, a notice may be sent to the alleged violator; such a notice shall not be required before commencing enforcement or prosecution.

Section 1-8-6 Service of Citation

Except as otherwise required by the Arizona Rules of Criminal Procedure or the Arizona Rules of Procedure in Civil Traffic Violation Cases, a copy of each citation or complaint shall be served as follows:

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- A. **Hand Delivery.** By hand delivery to the alleged violator or to a resident, of at least 16 years of age, of the last known address of the alleged violator.
- B. **United States Mail.** By United States certified or registered mail, return receipt requested, to the alleged violator to the last known address of the alleged violator. Service by mail is deemed complete upon deposit in the United States mail.
- C. **Alternate Methods.** With authorization from the Magistrate Court, by an alternate method of service set forth in the Arizona Rules of Civil Procedure.

Section 1-8-7 Appearance; Initial Hearing

- A. **Initial Hearing.** At the initial hearing, the alleged violator shall admit or deny the allegations in the citation or complaint. For criminal misdemeanor or petty offenses not admitted, the Magistrate Court shall set a pre-trial conference with the Town Prosecutor. For civil offenses and civil traffic violations not admitted, the Magistrate Court shall set a date for a hearing on the violation.
- B. **Amendment of Civil Citation or Complaint.** At any time at least seven calendar days before a hearing, the person enforcing or prosecuting a violation on behalf of the Town may amend a civil citation or complaint and add additional violations arising from or related to the original incident.
- B. **Sentencing.** If the alleged violator admits the violation, the Magistrate Court may either impose the sentence at the initial hearing or set a sentencing hearing to give sufficient time to determine appropriate penalties under Article 1-8, including restitution.
- C. **Admission by Payment.** For civil offenses and civil traffic violations, an alleged violator may admit them by paying the fine to the Clerk of the Magistrate Court, without any initial hearing or further appearance before the Magistrate Court; the alleged violator shall still be subject to any restitution claims.
- D. **Waiver of Objections to Service.** Any alleged violator appearing before the Magistrate Court to deny the allegations shall be deemed to waive any objections to the service of the citation or complaint unless the alleged violator affirmatively raises such objection at the time of the alleged violator's first appearance.

Section 1-8-8 Failure to Appear; Default Judgment; Failure to Pay

- A. **Entry of Default Judgment.** For a civil offense or a civil traffic violation, if the alleged violator fails appear at the Magistrate Court on the date and time of the hearing specified in the citation or complaint, the Magistrate Court shall enter judgment by default against the alleged violator. The judgment by default shall be set aside as permitted by the applicable rules of procedure.

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- B. **Default Fee.** The Magistrate Court may impose an additional default fee of not to exceed fifty dollars (\$50) for a default or a failure to pay any monetary penalty under Article 1-8 for a civil offense or a civil traffic violation. This default fee may be waived by the Magistrate Court for a person found by the Magistrate Court to be indigent.
- C. **Suspension of License for Civil Traffic Violations.** For civil traffic violations, the Magistrate Court may notify the Motor Vehicle Division of the alleged violator's failure to appear and default judgment if required by Arizona law and may direct the Motor Vehicle Division to suspend the alleged violator's driver license or nonresident operating privilege until the monetary penalty is paid by the alleged violator. The Magistrate Court shall mail a notice to the last known address of the alleged violator of the same.
- D. **Setting Aside Default Judgments.** For civil traffic violations, a default judgment may be set aside under Rule 23 of the Arizona Rules of Procedure in Civil Traffic Violation Cases.
- E. **Warrant for Criminal Offense.** For a criminal misdemeanor offense or a petty offense, if the alleged violator fails appear at the Magistrate Court on the date and time of the hearing specified in the citation or complaint or any subsequent hearing or conference, the Magistrate Court may issue a warrant for the alleged violator's arrest and if a warrant issues, shall mail a notice to the last known address of the alleged violator, if any, of the warrant and the procedure to clear the warrant.
- F. **Suspension of License for Criminal Offense.** For a criminal misdemeanor offense under Title 28, Arizona Revised Statutes, if the alleged violator fails appear at the Magistrate Court on the date and time of the hearing specified in the citation or complaint, the Magistrate Court may direct the Motor Vehicle Division to suspend the alleged violator's driver license or nonresident operating privilege until the alleged violator appears at the Magistrate Court.

Section 1-8-9 Rules of Procedure

- A. For civil offenses and civil traffic violations, to the extent applicable, the Arizona Rules of Procedure in Civil Traffic Violation Cases shall apply, except as modified by the provisions of the code.
- B. For violations of criminal misdemeanor offenses and petty offenses, the Arizona Rules of Criminal Procedure shall apply.

Section 1-8-10 Appeals

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- A. **Appeal of Civil Traffic Violations.** As provided by A.R.S. § 12-124, final decisions of the Magistrate Court for civil traffic violations may be appealed to the Yavapai County Superior Court.
- B. **Appeal of Civil Violations.** As provided by A.R.S. § 9-500.21, final decisions of the Magistrate Court for civil offenses may be appealed to the Yavapai County Superior Court.
- C. **Appeal of Criminal Violations.** As provided by Arizona law, final decisions of the Magistrate Court for criminal misdemeanor and petty offenses may be appealed to the Yavapai County Superior Court.
- D. **Notice of Appeal.** Unless Arizona law provides otherwise, if a violator appeals the final decision of the Magistrate Court, the violator shall file a Notice of Appeal with the clerk of the Magistrate Court within the time required by the applicable procedural rules; if the rules do not provide the time, then within fourteen (14) calendar days from the date the final decision of the Magistrate Court was filed with the clerk of the Magistrate Court.
- E. **Bond.** The violator shall pay a bond equal to the amount of the monetary penalties imposed by the Magistrate Court at the time of filing the Notice of Appeal; if the violator appeals a final decision without paying the bond, enforcement of the monetary penalties imposed shall not be stayed.

Section 1-8-11 Magistrate Court

In this Article, when a reference is made to the Magistrate Court, it may refer to an action taken by the Town Magistrate or a Hearing Officer authorized by Chapter 5.

Section 1-8-12 Applicability; Severability; Conflicts; Amended Statutes

- A. **Applicability.** This Article 1-8 applies even if another Article of the code does not have a specific section or subsection dealing with violations.
- B. **Conflicts.** If any section or subsection of this Article conflicts with the Arizona Revised Statutes or the applicable procedural rules, the Arizona Revised Statutes or the applicable procedural rules shall prevail.
- C. **Severability.** This Article's sections and subsections are severable: if section or subsection is held invalid by a court of competent jurisdiction, the remaining sections and subsections shall continue to be valid.
- D. **Amended Statutes.** Any reference in this Article to the Arizona Revised Statutes, a statute, or a procedural rule refers to the statute or procedural rule as amended.

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Article 1-9 REPEAL OF EXISTING ORDINANCES

- 1-9-1 Effective Date of Repeal
- 1-9-2 Ordinances Exempt from Repeal

Section 1-9-1 Effective Date of Repeal

All ordinances of the Town except those especially exempt in this article, now in force and effect are hereby repealed effective at twelve o'clock noon on the 12th of December, 1986 but all rights, duties and obligations created by said ordinances shall continue and exist in all respects as if this code had not been adopted and enacted.

Section 1-9-2 Ordinances Exempt from Repeal

The adoption and enactment of this code shall not be construed to repeal or in any way to modify or affect:

- A. Any special ordinance or ordinances regarding franchises, annexations, dedications or zoning.
- B. Any ordinance making an appropriation.
- C. Any ordinance affecting any bond issue or by which any bond issue may have been authorized.
- D. The running of the statute of limitations in force at the time this code becomes effective.
- E. The continued existence and operation of any department, agency, commission or office heretofore legally established or held.
- F. Any bond of any public officer.
- G. Any taxes, fees, assessments or other charges incurred or imposed.
- H. Any ordinances authorizing, ratifying, confirming, approving or accepting any compact or contract with any other municipality, the State of Arizona or any country or subdivision thereof, or with the United States or any agency or instrumentality thereof.

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Article 1-10 EFFECTIVE DATE OF CODE

Each and every section of this code as herein contained and hereby enacted shall take effect and be in force on and after twelve o'clock noon on the 12th of December 1986, except that where a later effective date is provided it shall prevail.