

ORDINANCE NO. 5061

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA,
ARIZONA AMENDING SECTION TITLE 8, HEALTH, SANITATION, AND
ENVIRONMENT, CHAPTER 2, ENVIRONMENTAL PROTECTION,
ARTICLE 1, PARTICULATE POLLUTION SOURCES.**

WHEREAS, The Environmental Protection Agency has established health based standards for particulate matter less than 10 microns (PM10);

WHEREAS, the Maricopa County region has not yet achieved compliance with those standards;

WHEREAS, the City of Mesa, in conjunction with the Maricopa Association of Governments has been working regionally for more than fourteen years to institute control measures that will reduce PM10 to acceptable levels; and

WHEREAS, the City of Mesa Development and Sustainability Department is to provide the current level of enforcement for the existing code sections and any new sections consistent with the City of Mesa Public Nuisances, Property Maintenance, Neighborhood Preservation, and Animal Regulation adopted under Title 8, Health, Sanitation, and Environment, Chapter 6 of the Mesa City Code;

NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, AS FOLLOWS:

SECTION 1: That Title 8, Chapter 2 of the Mesa City Code of Ordinances, Mesa, Arizona is hereby amended as follows:

ADDITIONS TO THE TEXT ARE SHOWN IN BOLD, ALL CAPITAL LETTERS AND UNDERLINED: ABC

DELETIONS TO THE TEXT ARE SHOWN AS STRIKE-OUTS: ~~Abc~~

2011 AMENDMENTS TO MESA CITY CODE

TITLE 8, HEALTH, SANITATION, AND ENVIRONMENT

CHAPTER 2, ENVIRONMENTAL PROTECTION

ARTICLE I, PARTICULATE POLLUTION SOURCES

SEPTEMBER 2011

SECTION:

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8-2-1: PURPOSE AND APPLICABILITY:

To limit the amount of particulate matter (PM₁₀ or less) entrained into the ambient air from any property, operation, or activity as a result of the impact of human activities by requiring measures to prevent, reduce, or mitigate particulate matter emissions. These requirements shall apply to any activity, equipment, operation, and/or man-made or man-caused condition or practice that is capable of generating fugitive dust. (3465)

8-2-2: DEFINITIONS:

For the purpose of this Article the following definitions shall apply: (3465)

BULK MATERIAL: Any organic or inorganic material that is capable of producing fugitive dust, including earth, rock, silt, sediment, sand, gravel, soil, fill, aggregate, dirt, mud, demolition debris, cotton trash, ABC, cinders, pumice, sawdust, feeds, grains, fertilizers, and dry cement. (3465)

CITY MANAGER: THE CITY MANAGER APPOINTED IN ACCORDANCE WITH ARTICLE III OF THE CITY OF MESA CITY CHARTER.

CIVIL HEARING OFFICER: THE MESA ZONING ADMINISTRATOR WITHIN THE DEVELOPMENT AND SUSTAINABILITY DEPARTMENT OR SUCH OTHER PERSON AS DESIGNATED BY THE CITY MANAGER.

CONTROL MEASURE: A technique, practice, or procedure used to prevent or minimize the generation, emission, entrainment, suspension, or airborne transport of fugitive dust. (3465)

DISTURBED SURFACE AREA: A portion of the earth's surface or material placed thereupon which has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural condition to an extent that it increases the potential for the emission of fugitive dust. Disturbed surface areas include shoulders of paved roads; unpaved roads; haul roads; access points where unpaved traffic surfaces join paved roads; construction and demolition sites; unpaved parking, storage, and staging areas; bulk material stockpiles; wind and water erodible soils; vacant parcels; urban or suburban open areas, whether public or private lands. (3465)

DUST: Particulate matter which is capable of temporary suspension in air excluding that material emitted directly into the atmosphere in the exhaust of motor vehicles and other internal combustion engines. (3465)

DUST CONTROL PLAN: A written report that is required to be prepared by Maricopa County Air Pollution Control Rule 310 that describes all control measures to be implemented at a work site or in transit to and from a work site for any dust-generating operation. (3465)

DUST-GENERATING OPERATION: Any activity capable of generating fugitive dust, including, but not limited to, land clearing, earth moving, weed abatement, farming operations, excavating, construction, demolition, material handling, storage and transporting, vehicle use and movement, or the operation of any outdoor equipment, facilities, or unpaved parking or staging areas. (3465)

EARTH-MOVING OPERATION: The use of any equipment in a dust-generating operation. (3465)

FREEBOARD: The measured vertical distance taken where the bulk material touches the vertical sides of an

unroofed enclosure or truck bed. (3465)

FUGITIVE DUST: Dust which is not collected by a capture system and is suspended in the ambient air. (3465)

GRAVEL PAD: A layer of at least one inch (1") or larger diameter washed gravel, rock, or crushed rock maintained at the point of intersection of a public access roadway and a work site entrance to dislodge mud, dirt, or debris from the tires of motor vehicles or haul trucks prior to leaving the site. (3465)

GRIZZLY: A mechanical device to dislodge mud, dirt, or debris from the tires and undercarriage of motor vehicles and haul trucks prior to leaving the work site. (3465)

HAZARD: A condition that ~~may cause personal physical harm~~ **PRESENTS A RISK TO THE PUBLIC HEALTH OR THE ENVIRONMENT.** (3465)

IMMINENT HAZARD: A condition that presents an immediate likelihood for causing ~~personal physical harm~~ **TO THE PUBLIC HEALTH OR THE ENVIRONMENT.** (3465)

HAUL ROAD: Any on-site unpaved road used by commercial, industrial, institutional, or governmental traffic. (3465)

HAUL TRUCK: Any fully or partially open-bodied, self-propelled vehicle including any nonmotorized attachments, such as trailers or other conveyances which are connected to or propelled by the actual motorized portion of the vehicle. (3465)

LANDSCAPE DEBRIS: Debris generated or accumulated as a result of or moved in the course of landscape operations. (4820)

MOTOR VEHICLE: Every device by which any person or property is or may be transported or drawn upon a street or highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks. (3465)

NOTICE TO ABATE: A NOTICE ISSUED TO A RESPONSIBLE PARTY CONCERNING A VIOLATION OF THIS CHAPTER OF THE MESA CITY CODE.

OFF-ROAD VEHICLE: Any self-propelled conveyance which includes off-road or all-terrain equipment, trucks, cars, motorcycles, motorbikes, or motor buggies. (3465)

OPACITY: Entrained particulate pollution that results in an increased optical density. (3465)

PARTICULATE MATTER: Any solid material which has a nominal aerodynamic diameter smaller than one hundred (100) microns (micrometers), and which exists in a finely divided form. (3465)

PERSON: Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, state, municipality, Indian tribe, political subdivision of the state, federal government agency, or any other legal entity, including their legal representatives, agents, or assigns. (3465)

PM₁₀: Particulate matter with an aerodynamic diameter smaller than or equal to ten (10) microns (micrometers) as measured by the applicable state and federal reference test methods. (3465)

PUBLIC STREET: A road, highway or thoroughfare that is used by the public or that is open to the use of the public as a matter of right, for the purpose of vehicle travel. (4820)

RESPONSIBLE PARTY: A PERSON WHO KNOWS OR HAS REASON TO KNOW OF THE EXISTENCE OF ANY VIOLATION OF THIS CHAPTER ON THAT PERSON'S PROPERTY OR PROPERTY WHICH THAT PERSON OCCUPIES OR CONTROLS, IN WHOLE OR IN PART, INCLUDING BUT NOT LIMITED TO AN OWNER, OCCUPANT, LESSOR, LESSEE, MANAGER,

MANAGING AGENT, LICENSEE OR ANY PERSON WHO HAS LEGAL CARE OR CONTROL OF THE PROPERTY.

STABILIZED SURFACE: A portion of the earth's surface or material placed thereupon with a visible crusted surface that has been made resistant to the formation of windblown dust pursuant to this Article. (3465)

TRACK-OUT: Any and all bulk materials that adhere to and agglomerate on the exterior surfaces of motor vehicles, haul trucks, or equipment (including tires) and that has fallen onto a public access roadway. (3465)

TRACK-OUT CONTROL DEVICE: A gravel pad, grizzly, wheel wash system, or a paved or otherwise stabilized area located at the point of intersection of an unpaved area and a paved roadway. (3465)

UNPAVED ROAD: Any road, equipment path, or driveway that is not covered by asphalt, asphaltic concrete, concrete pavement. (3465)

URBAN OR SUBURBAN OPEN AREA: An unsubdivided or undeveloped tract of land adjoining a residential, industrial, or commercial area. (3465)

VACANT PARCEL: A subdivided residential, industrial, institutional, governmental, or commercial lot which contains no approved or permitted buildings or structures of a temporary or permanent nature. (3465)

WINDBLOWN DUST: Visible emissions from any disturbed surface area which are generated by wind action alone. (3465)

WORK SITE: The real property upon which dust-generating operations occur. (3465)

8-2-3: PERMITS AND DUST CONTROL PLAN REQUIRED FOR EARTH-MOVING DUST GENERATING OPERATIONS:

- (A) No person shall commence any earth-moving operation or dust-generating operation that will disturb 0.1 contiguous acre or greater without meeting the requirements of, obtaining, and submitting to the ~~Building Safety Director~~ **CITY MANAGER OR DESIGNEE** any and all ~~earth-moving equipment permits~~ **DUST CONTROL PERMITS** and permits to operate required by Rule 200 of the Maricopa County Air Pollution Control Regulations. A properly executed Maricopa County ~~earth-moving permit~~ **DUST CONTROL PERMIT** including the dust control plan shall be submitted to the ~~Building Safety Director~~ **CITY MANAGER OR DESIGNEE**. The City of Mesa will not issue a construction permit nor will verbal authorization be given to proceed with initial grading and drainage operations until an approved ~~earth-moving permit~~ **DUST CONTROL PERMIT** with dust control plan have been submitted to the City. (3465,4254)
- (B) Provisions of Subsection (A) of this Section shall not apply to the following: (3465)
1. During emergency, life-threatening situations or in conjunction with any officially declared disaster or state of emergency. (3465)
 2. To operations conducted by essential service utilities to provide electricity, natural gas, oil and gas transmission, cable television, telephone, water, and sewerage during service outages and emergency disruptions. (3465)
 3. To nonroutine or emergency maintenance of flood control channels and water retention basins. (3465)
 4. To vehicle test and development facilities and operations if both of the following conditions apply: (3465)
 - (a) Dust is required to test and validate design integrity, product quality, or commercial acceptance; and (3465)
 - (b) Such testing is not feasible within enclosed facilities. (3465)

8-2-4: COMPLIANCE LIMITS:

- (A) No person shall cause, suffer, allow, or engage in any dust-generating operation which causes fugitive dust emissions to exceed twenty percent (20%) opacity. (3465)
1. Opacity shall be determined by observations for visible emissions of stationary sources of fugitive dust and shall be conducted in accordance with techniques specified in Reference Method 9 adopted by the United States Environmental Protection Agency or by an equivalent method approved by the City of Mesa. (3465)
 2. Opacity observations for intermittent sources of fugitive dust shall be conducted in accordance with this Section and shall not exceed twenty percent (20%) opacity for three (3) minutes within a thirty- (30-) minute period. (3465)
- (B) No person shall allow any machinery or vehicles to exit from a construction or development site or from a special event site disturbed surface area and thereby cause to be deposited upon a street any accumulation of soil. (3465)
1. In addition, all work sites five (5) acres or larger must have a suitable track-out control device installed at all entrances to a public access roadway. (3465)
 2. When spillage or track-out occurs onto any public access roadway, such deposits shall be cleaned up implementing control measures so as to prevent or minimize fugitive dust. Cleanup shall occur at the following frequency: (3465)
 - (a) When deposits extend a cumulative distance of fifty (50) linear feet or greater onto any public access roadway, such deposits shall be cleaned up immediately. (3465)
 - (b) All other deposits onto a public access roadway shall be cleaned up within two (2) hours of their occurrence. (3465)
 - (c) Deposition onto roadways temporarily restricted from public access shall be cleaned up prior to resuming public access. (3465)
- (C) No person shall cause, suffer, or allow the deposition of bulk materials onto any paved roadway, paved parking, or paved staging area from adjacent real property, whether by natural or man-caused forces of erosion. In the event that such deposits originating from the real property occur, the property owner, operator, or designated agent thereof shall undertake all of the following actions: (3465)
1. Remove any and all deposits utilizing the appropriate control measures within twenty-four (24) hours of the deposit's occurrence or prior to the resumption of traffic on pavement where the pavement area has been closed to traffic. City operations to clean streets after storm events when no party responsible for the deposits can be located are exempt from this requirement. (3465)
 2. Dispose of the bulk materials resulting from the removal of these deposits in such a manner so as not to cause or become another source of fugitive dust. (3465)
- (D) No person shall cause, suffer, or allow an unpaved or unstabilized vacant parcel or an urban or suburban open area to be driven over or used by motor vehicles or off-road vehicles without first implementing control measures to effectively prevent or minimize fugitive dust. (3465,4820)
- ~~(E) No person shall operate, maintain, use, or allow the use of any unpaved area larger than five thousand (5,000) square feet for the parking, storage, servicing, or dispatching of motor vehicles without first implementing control measures to effectively prevent or minimize fugitive dust.* (3465)~~

~~* Pursuant to Ordinance #4820, Section 8-2-4 (E) shall take effect at 12:01 a.m. on October 1, 2008, to read as follows:~~

- (E) No person shall operate, maintain, use, or allow the use of any unpaved area for the ingress and egress, parking, storage, servicing, or dispatching of motor vehicles at any developments, other than residential buildings with four (4) or fewer units, without first implementing one or more of the following dustproof paving methods: (4820)
1. Asphaltic concrete
 2. Cement concrete
 3. Penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate
 4. A stabilization method approved by the City Manager or Designee. (4820)

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- (F) No person shall operate, maintain, use, or allow the use of any unpaved area greater than three thousand (3,000) square feet, at residential buildings with four (4) or fewer units, for the ingress and egress, parking, storage, servicing, or dispatching of motor vehicles at developments, without first implementing one or more of the following dustproof paving methods:*
1. Asphaltic concrete
 2. Cement concrete
 3. Penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate
 4. A stabilization method approved by the City Manager or Designee.* (4820)

~~* Pursuant to Ordinance #4820, Section 8-2-4 (F) shall take effect at 12:01 a.m. on October 1, 2009.~~

- (G) No person shall cause or allow any vacant parcel to remain unoccupied, unused, vacant, or undeveloped for more than fifteen (15) days without first implementing control measures to effectively prevent or minimize fugitive dust. (3465)
- (H) No person shall remove vegetation from any vacant parcel by blading, disking, plowing under, or any other means that disturbs 0.10 acres or more of soil surface without first obtaining ~~an earth-moving permit~~ **DUST CONTROL PERMIT** with its applicable dust control plan from Maricopa County. Any person engaged in weed abatement activity shall implement control measures to effectively prevent or minimize fugitive dust. This Subsection shall not apply to City operations to create firebreaks by order of the Fire Department. (3465)
- (I) No person shall disturb or remove soil, natural ground cover, or vegetation from any real property area without first implementing control measures to effectively prevent or minimize fugitive dust for the entire duration of the project including after-work hours, weekends, and holidays. (3465)
- (J) Within four (4) months of the termination of activities on the property described in Subsection (A) of this Section, the owner or operator of such property shall implement permanent control measures to achieve a stabilized surface. (3465)
- (K) No person shall cause, suffer, or allow the operation, use, or maintenance of any permanent haul road of more than fifty feet (50') in length at any work site unless the person implements control measures which effectively prevent or minimize fugitive dust. (3465)

- (L) No person shall operate, maintain, use, or allow the use of any commercial feedlot or commercial livestock area for purposes of farming, feeding, or displaying animals, or engage in other activity such as racing and exercising, without first implementing control measures to effectively prevent or minimize fugitive dust as specified in Sections 8-2-4-(A), (B), and (C) of this Article. (3465)
- (M) No person shall cause, suffer, allow, or engage in the handling of bulk materials including stacking, loading, unloading, conveying, and reclaiming, without first implementing control measures to effectively prevent or minimize fugitive dust. (3465)
- (N) No person shall cause, suffer, allow, or engage in the transportation of bulk materials unless in compliance with applicable requirements of this Section and without first implementing control measures to effectively prevent or minimize fugitive dust. (3465)
- (O) No person shall cause, suffer, allow, or engage in the use or operation of any haul truck within the boundaries of a work site or on a public access roadway in such manner as to cause the emission of fugitive dust from its cargo space. The following requirements shall apply to the use and operation of any haul truck: (3465)
 - 1. The cargo compartment of a haul truck shall be constructed and maintained so that no spillage or loss of bulk materials can occur from holes or other openings in the cargo compartment's floor, sides, or tailgate. (3465)
 - 2. Any haul truck shall be cleaned or kept covered once emptied or between cargoes when the residual particulate matter remaining in the cargo space is capable of becoming fugitive dust. (3465)
 - 3. All haul trucks shall be properly loaded so that the freeboard is not less than three inches (3") and shall be effectively covered with a tarp or other suitable enclosure; and (3465)
 - 4. All haul trucks and motor vehicles shall pass over or through a track-out control device so as to effectively remove particulate matter from the exterior surfaces. (3465)
- (P) No person shall cause, suffer, allow, or engage in the use, repair, construction, reconstruction, or improvement of any road, roadway, street, highway, or alley without first implementing control measures to effectively prevent or minimize fugitive dust. (3465)
- (Q) No person shall at any time blow landscape debris into any public roadway. (4820)
- (R) The provisions of this Section shall not apply to the following: (3465)
 - 1. When the average wind speed is greater than twenty-five (25) miles per hour, provided that all dust-control measures including contingency measures contained in the approved dust control plan are implemented. The average wind speed determination shall be based on a sixty- (60-) minute average from the nearest Maricopa County ~~Division of Air Pollution Control~~ **AIR QUALITY DEPARTMENT** monitoring station or as approved by the City of Mesa by a wind instrument located at the site being checked. (3465)
 - 2. Nonroutine or emergency maintenance of flood control channels and water retention basins. (3465)
 - 3. Vehicle test and development facilities and operations if both of the following conditions apply: (3465)
 - (a) Dust is required to test and validate design integrity, product quality, or commercial acceptance; and (3465)
 - (b) Such testing is not feasible within enclosed facilities. (3465)

8-2-5: REQUIRED CONTROL MEASURES:

- (A) No person shall conduct any dust-generating operations without implementing control measures to effectively control or minimize fugitive dust. (3465)

- (B) Persons subject to Subsection A of this Section shall select and effectively and appropriately implement control measures either individually or in combination in a manner that will control fugitive dust emissions to a level that shall not exceed the compliance limits prescribed in Section 8-2-4. If selected measures are not effective in preventing unacceptable emissions of fugitive dust, additional measures shall be implemented until compliance with Subsection A of this Section is achieved. (3465)

8-2-6 : POSTING, RECORD KEEPING, AND RECORDS RETENTION:

- (A) A copy of the Maricopa County ~~earth-moving permit~~ **DUST CONTROL PERMIT** and/or permit to operate as well as the approved dust control plan required by Section 8-2-3 must be kept readily available on site at all times. (3465)
- (B) Any person subject to the requirements of Section 8-2-3 shall keep a daily written log recording the actual application or implementation of the control measures delineated in the approved dust control plan. This log and supporting documentation shall be kept on site and made available for review on request. (3465)

8-2-7: AUTHORITY TO INSPECT:

(A) THE MESA DEVELOPMENT AND SUSTAINABILITY DEPARTMENT OR SUCH OTHER CITY DIVISION OR DEPARTMENT AS THE CITY MANAGER MAY DESIGNATE IS HEREBY AUTHORIZED TO MAKE INSPECTIONS FOR VIOLATIONS OF THIS CHAPTER IN THE NORMAL COURSE OF JOB DUTIES OR IN RESPONSE TO A CITIZEN COMPLAINT THAT AN ALLEGED VIOLATION OF THE PROVISIONS OF THIS CHAPTER MAY EXIST OR WHEN THERE IS A REASON TO BELIEVE THAT A VIOLATION OF THIS CHAPTER HAS BEEN OR IS BEING COMMITTED.

(B) IN ORDER TO DETERMINE COMPLIANCE WITH THIS CHAPTER, PRIVATE PROPERTY MAY BE ENTERED WITH THE CONSENT OF THE OWNER OR OCCUPANT OR AS AUTHORIZED BY A COURT OF COMPETENT JURISDICTION.

8-2-7: COMMENCEMENT OF AN ACTION:

~~(A) The Director of Environmental Programs and the inspectors within the Environmental Programs Department or such other persons as the City Manager may designate are authorized to commence an enforcement action under this Article by undertaking any one (1) or any combination of the following: (3465)~~

~~1. Issuing a notice of abatement under this Article; (3465)~~

~~2. Issuing a citation for a civil action under this Article; (3465)~~

~~3. Seeking the issuance of a complaint by the Mesa City Prosecutor for criminal misdemeanor prosecution under this Article. (3465)~~

~~(B) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Article or from enforcing this Article through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (3465)~~

8-2-8: COMMENCEMENT OF AN ACTION:

(A) THE CITY MANAGER OR DESIGNEE IS AUTHORIZED TO COMMENCE AN ENFORCEMENT ACTION UNDER THIS CHAPTER BY ISSUING A NOTICE OF ABATEMENT UNDER THIS CHAPTER OR A CITATION FOR CIVIL SANCTIONS UNDER THIS CHAPTER, OR BOTH. THEY MAY ALSO SEEK THE ISSUANCE OF A COMPLAINT BY THE MESA CITY PROSECUTOR FOR CRIMINAL PROSECUTION OF HABITUAL OFFENDERS AS DEFINED IN THIS CHAPTER.

(B) NOTHING IN THIS SECTION SHALL PRECLUDE CITY EMPLOYEES FROM SEEKING

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VOLUNTARY COMPLIANCE WITH THE PROVISIONS OF THIS CHAPTER OR FROM ENFORCING THIS CHAPTER THROUGH NOTICES OF VIOLATION, WARNINGS, OR OTHER INFORMAL DEVICES DESIGNED TO ACHIEVE COMPLIANCE IN THE MOST EFFICIENT AND EFFECTIVE MANNER UNDER THE CIRCUMSTANCES.

8-2-8: REMEDIES NOT EXCLUSIVE:

~~Violations of this Article are in addition to any other violation established by law, and this Article shall not be interpreted as limiting the penalties, actions, or abatement procedures which may be taken by the City or other persons under other laws, ordinances, or rules. (3465)~~

8-2-9: REMEDIES NOT EXCLUSIVE:

VIOLATIONS OF THIS CHAPTER ARE IN ADDITION TO ANY OTHER VIOLATION ESTABLISHED BY LAW, AND THIS CHAPTER SHALL NOT BE INTERPRETED AS LIMITING THE PENALTIES, ACTIONS, OR ABATEMENT PROCEDURES WHICH MAY BE TAKEN BY THE CITY OR OTHER PERSONS UNDER OTHER LAWS, ORDINANCES, OR RULES.

8-2-9: DEFENDANTS AND RESPONSIBLE PARTIES:

~~Any person who causes, permits, facilitates, aids, or abets any violation of this Article or who fails to perform any act or duty required pursuant to this Article is subject to the enforcement provisions of this Article. The owner and operator of equipment, vehicles, or property in violation of this Article may be individually and jointly responsible for the violation, the prescribed civil or criminal sanctions, and for abating the violation. (3465,4074)~~

8-2-10: DEFENDANTS AND RESPONSIBLE PARTIES:

ANY RESPONSIBLE PARTY WHO CAUSES, PERMITS, FACILITATES, AIDS, OR ABETS ANY VIOLATION OF THIS CHAPTER OR WHO FAILS TO PERFORM ANY ACT OR DUTY REQUIRED PURSUANT TO THIS CHAPTER, IS SUBJECT TO THE ENFORCEMENT PROVISIONS OF THIS CHAPTER. RESPONSIBLE PARTIES MAY BE INDIVIDUALLY AND JOINTLY RESPONSIBLE FOR THE VIOLATIONS, THE PRESCRIBED CIVIL OR CRIMINAL SANCTIONS, FOR ABATEMENT OF THE VIOLATION AND FOR ANY ASSOCIATED COSTS AND FEES.

8-2-10: NOTICE OF ABATEMENT:

~~(A) The notice to abate shall set forth the following information: (3465)~~

- ~~1. The owner/operator or responsible party shall abate the violation within the time specified in the notice. (3465)~~
- ~~2. Identification of the owner/operator or responsible party and the site location. (3465)~~
- ~~3. Statement of the violation in sufficient detail to allow a reasonable person to identify and correct the violation(s). (3465)~~
- ~~4. Reinspection date and time. (3465)~~
- ~~5. Name, business address, and business phone number of the City inspector who sent the notice to abate. (3465)~~
- ~~6. A warning stating that if the violations are not corrected within the specified time, the City may abate the problem itself or by private contractor, assess the owner/operator or responsible party for the cost of such abatement, and record a lien on the property for the assessment. (3465)~~
- ~~7. Hearing procedures. (3465)~~
- ~~8. If the City determines that an imminent hazard exists, the City may proceed with abatement pursuant to Section 8-2-13 of this Article. (3465)~~

- ~~(B) If the owner/operator or responsible party served a notice to abate by the City pursuant to this Article fails to comply with such notice, the City may correct or abate the conditions subject to the notice if those conditions constitute a hazard. If the City corrects or abates those conditions, the City Manager or designee may prepare a verified statement as to the actual cost of correcting or abating the violation, including costs of inspection and other City incurred costs associated with abating the violation. The statement shall be delivered or mailed, certified mail, return receipt requested, to the owner(s) or other person(s) upon which the notice to abate or order was served. That statement shall further set forth the following: (3465)~~
- ~~1. That the statement of costs is an assessment upon the lots and tracts of land from which the City corrected or abated the violation. (3465)~~
 - ~~2. That the party has fifteen (15) days from the date of delivery or mailing of the statement to pay. (3465)~~
 - ~~3. In the event payment is not received in fifteen (15) days, the City will place a lien on the property in the amount of the assessment. (3465)~~
 - ~~4. Appeal procedures. (3465)~~
- ~~(C) The notice to abate and the statement of abatement costs shall be served by either delivering them to the owner/operator or responsible party or their agent or by mailing them by certified mail, return receipt requested. Service is deemed effective and complete on the date it is received by the owner/operator, responsible party, or their agent. (3465)~~

8-2-11: CIVIL VIOLATIONS AND CITATION:

- (A) A CIVIL ACTION FOR VIOLATIONS OF THIS CHAPTER MAY BE COMMENCED BY ISSUANCE OF A CITATION.**
- (B) THE CITATION WILL BE SUBSTANTIALLY IN THE FORM ESTABLISHED BY THE CITY MANAGER OR DESIGNEE. THE CITATION SHALL ADVISE THE RESPONSIBLE PARTY OF THE VIOLATION(S) COMMITTED, EITHER BY WRITTEN DESCRIPTION OF THE VIOLATIONS OR BY DESIGNATION OF THE CITY CODE SECTION THAT WAS VIOLATED. THE CITATION SHALL DIRECT THE RESPONSIBLE PARTY TO PAY THE CIVIL SANCTION AND ALL APPLICABLE FEES IN ACCORDANCE WITH SECTION 8-2-12 OF THIS CHAPTER WITHIN THE TIME PERIOD SPECIFIED ON THE CITATION .OR TO APPEAR BEFORE THE CIVIL HEARING OFFICER WITHIN THE TIME PERIOD SPECIFIED ON THE CITATION AND ADMIT OR DENY THE ALLEGATIONS CONTAINED IN THE CITATION. THE CIVIL HEARING OFFICER MAY PERMIT AMENDMENTS TO THE CITATION IF SUBSTANTIAL RIGHTS OF THE RESPONSIBLE PARTY ARE NOT THEREBY PREJUDICED. THE CITATION SHALL BE SERVED PURSUANT TO THE ARIZONA RULES OF CIVIL PROCEDURE.**
- (C) THE RESPONSIBLE PARTY SHALL, WITHIN THE TIME PERIOD SPECIFIED ON THE CITATION OR WITHIN 10 CALENDAR DAYS OF THE ISSUANCE OF THE CITATION, WHICHEVER IS GREATER, EITHER PAY THE CIVIL SANCTION AND THE FEES, OR APPEAR IN PERSON, THROUGH AN ATTORNEY OR BY EMAIL WITH THE CLERK OF THE CIVIL HEARING OFFICER AND ADMIT OR DENY THE ALLEGATIONS CONTAINED IN THE CITATION.**
- 1. IF THE RESPONSIBLE PARTY TIMELY PAYS THE CIVIL SANCTION AND THE FEES, EITHER IN PERSON OR BY MAILING PAYMENT TO THE CITY, THE ALLEGATIONS IN THE CITATION SHALL BE DEEMED ADMITTED AND SUCH PERSON SHALL BE DEEMED RESPONSIBLE FOR HAVING COMMITTED THE OFFENSE(S) DESCRIBED IN THE CITATION. IF THE RESPONSIBLE PARTY APPEARS IN PERSON, THROUGH AN ATTORNEY OR BY EMAIL AND ADMITS THE ALLEGATIONS, THE CIVIL HEARING OFFICER SHALL ENTER JUDGMENT AGAINST THE RESPONSIBLE PARTY IN THE AMOUNT OF THE CIVIL SANCTION, PLUS ANY APPLICABLE FEES DESIGNATED IN SECTION 8-2-12; OR,**

2. IF THE RESPONSIBLE PARTY APPEARS IN PERSON, THROUGH AN ATTORNEY OR BY EMAIL AND DENIES THE ALLEGATIONS CONTAINED IN THE CITATION, THE CLERK OF THE CIVIL HEARING OFFICE SHALL SET THE MATTER FOR HEARING.

(D) IF A PERSON SERVED WITH A CITATION FAILS TO PAY THE CIVIL SANCTION AND THE FEES OR TO FILE ON OR BEFORE THE TIME DIRECTED ON THE CITATION OR AT THE TIME SET FOR HEARING BY THE CIVIL HEARING OFFICER, THE ALLEGATIONS IN THE COMPLAINT SHALL BE DEEMED ADMITTED, AND THE CIVIL HEARING OFFICER SHALL ENTER A FINDING OF RESPONSIBLE AND A JUDGMENT FOR THE CITY AND IMPOSE THE APPROPRIATE SANCTIONS AND FEES.

(E) ALL PROCEEDINGS BEFORE THE CIVIL HEARING OFFICER SHALL BE INFORMAL AND WITHOUT A JURY, EXCEPT THAT TESTIMONY SHALL BE GIVEN UNDER OATH OR AFFIRMATION. THE TECHNICAL RULES OF EVIDENCE DO NOT APPLY, EXCEPT FOR STATUTORY PROVISIONS RELATING TO PRIVILEGED COMMUNICATIONS. IF THE ALLEGATIONS IN THE CITATION ARE DENIED, THE CITY IS REQUIRED TO PROVE VIOLATIONS OF THIS CHAPTER BY A PREPONDERANCE OF THE EVIDENCE. NO PREHEARING DISCOVERY SHALL BE PERMITTED, EXCEPT UNDER EXTRAORDINARY CIRCUMSTANCES AS DETERMINED BY THE CIVIL HEARING OFFICER. THE CIVIL HEARING OFFICER IS AUTHORIZED TO MAKE SUCH ORDERS AS MAY BE NECESSARY OR APPROPRIATE TO FAIRLY AND EFFICIENTLY DETERMINE THE TRUTH AND DECIDE THE CASE AT HAND. AN APPEAL FROM FINAL JUDGMENTS OF THE CIVIL HEARING OFFICER MAY BE TAKEN PURSUANT TO THE ARIZONA RULES OF CIVIL PROCEDURE FOR SPECIAL ACTIONS.

(F) ANY PERSON AGGRIEVED BY A DECISION OF THE CIVIL HEARING OFFICER, AT ANY TIME WITHIN 30 CALENDAR DAYS AFTER A FINAL JUDGMENT HAS BEEN RENDERED, MAY FILE A COMPLAINT OF SPECIAL ACTION IN SUPERIOR COURT TO REVIEW THE CIVIL HEARING OFFICER'S DECISION. FILING THE COMPLAINT DOES NOT STAY PROCEEDINGS ON THE DECISION SOUGHT TO BE REVIEWED, BUT THE COURT MAY, ON APPLICATION, GRANT A STAY AND ON FINAL HEARING, AFFIRM OR REVERSE, IN WHOLE OR IN PART, OR MODIFY THE DECISION REVIEWED.

8-2-11: REQUEST FOR ABATEMENT HEARING:

The owner/operator or responsible party receiving a notice to abate under this Article or a statement of costs incurred by the City in abating a violation may appeal by requesting in writing a hearing and by serving such a request on the Director of Environmental Programs within fifteen (15) calendar days of service of the notice to abate or the statement of costs. The hearing shall be held before the Hearing Officer or his designee as soon as practicable after the filing of the request. The decision of the Hearing Officer is final and binding. If no written and timely request for hearing is made under this Section to the Director of Environmental Programs, then the notice of abatement or statement of costs is final and binding. (3465)

8-2-12: CIVIL PENALTIES:

(A) ANY RESPONSIBLE PARTY WHO IS FOUND RESPONSIBLE FOR A CIVIL VIOLATION OF THIS CHAPTER, WHETHER BY ADMISSION, DEFAULT, OR AFTER A HEARING, SHALL PAY A CIVIL SANCTION OF NOT LESS THAN \$150 OR MORE THAN \$1,500. A SECOND FINDING OF RESPONSIBILITY WITHIN 36 MONTHS OF THE COMMISSION OF A PRIOR VIOLATION OF THIS CHAPTER SHALL RESULT IN AN ENHANCED CIVIL SANCTION OF NOT LESS THAN \$250 OR MORE THAN \$2,500. A THIRD FINDING OF RESPONSIBILITY WITHIN 36 MONTHS OF THE COMMISSION OF A PRIOR VIOLATION OF THIS CHAPTER SHALL RESULT IN AN ENHANCED CIVIL SANCTION OF NOT LESS THAN \$500 OR MORE THAN \$2,500. IN ADDITION TO THE CIVIL SANCTION, THE RESPONSIBLE PARTY SHALL PAY THE APPLICABLE FEES AND CHARGES SET FORTH IN THE CITY'S DEVELOPMENT AND SUSTAINABILITY DEPARTMENT (CODE COMPLIANCE) SCHEDULE OF FEES AND CHARGES, AND MAY BE ORDERED TO PAY ANY OTHER APPLICABLE FEES AND CHARGES.

(B) AFTER ENTERING A JUDGMENT OF RESPONSIBLE AND SETTING A CIVIL SANCTION AND FEES AS SPECIFIED IN SECTION 8-2-12 (A), THE CIVIL HEARING OFFICER MAY ORDER A COMPLIANCE HEARING AND SET A DATE FOR SUCH HEARING. UPON PRESENTATION OF EVIDENCE AND/OR TESTIMONY BY THE CITY INSPECTOR AT THE COMPLIANCE HEARING THAT THE VIOLATION(S) SPECIFIED IN THE COMPLAINT HAS BEEN ABATED, THE CIVIL HEARING OFFICER MAY REDUCE ALL OR A PORTION OF THE CIVIL SANCTION COMMENSURATE WITH THE COST BORNE BY THE DEFENDANT TO ACHIEVE COMPLIANCE, OR THE CIVIL HEARING OFFICER MAY VACATE THE PREVIOUS JUDGMENT AND DISMISS THE CITATION(S). IF, A MINIMUM OF 7 CALENDAR DAYS BEFORE A SCHEDULED COMPLIANCE HEARING, THE CIVIL HEARING OFFICER RECEIVES BOTH OF THE FOLLOWING ITEMS, THEN THE CIVIL HEARING OFFICER MAY ISSUE WRITTEN ORDERS COMMENSURATE WITH THE AUTHORITY GIVEN IN THIS SECTION, TO REDUCE CIVIL SANCTIONS AND/OR VACATE THE RELATED JUDGMENT WITHOUT HOLDING THE SCHEDULED COMPLIANCE HEARING:

1. WRITTEN AND NOTARIZED CONFIRMATION FROM THE CITY INSPECTOR THAT THE VIOLATION HAS BEEN SUCCESSFULLY ABATED, AND

2. A WRITTEN AND NOTARIZED STATEMENT FROM THE DEFENDANT DESCRIBING THE ACTIONS TAKEN AND THE ITEMIZED COSTS BORNE TO ABATE THE VIOLATION.

IF EITHER ITEM HAS NOT BEEN RECEIVED BY THE CIVIL HEARING OFFICER 7 CALENDAR DAYS BEFORE, THEN THE COMPLIANCE HEARING SHALL TAKE PLACE AS PREVIOUSLY SCHEDULED.

(C) THE 36 MONTH PROVISION OF PARAGRAPH (A) OF THIS SECTION SHALL BE CALCULATED BY THE DATES THE VIOLATIONS WERE COMMITTED. THE RESPONSIBLE PARTY SHALL RECEIVE THE ENHANCED SANCTION UPON A FINDING OF RESPONSIBILITY FOR ANY VIOLATION OF THIS CHAPTER THAT WAS COMMITTED WITHIN 36 MONTHS OF THE COMMISSION OF ANOTHER VIOLATION FOR WHICH THE RESPONSIBLE PARTY WAS CONVICTED OR WAS OTHERWISE FOUND RESPONSIBLE, IRRESPECTIVE OF THE ORDER IN WHICH THE VIOLATIONS OCCURRED OR WHETHER THE PRIOR VIOLATION WAS CIVIL OR CRIMINAL

(D) EACH DAY IN WHICH A VIOLATION OF THIS CHAPTER CONTINUES OR THE FAILURE TO PERFORM ANY ACT OR DUTY REQUIRED BY THIS CHAPTER OR BY THE CIVIL HEARING OFFICER CONTINUES SHALL CONSTITUTE A SEPARATE CIVIL OFFENSE.

8-2-12: RECORDING AN ABATEMENT VIOLATION:

~~The notice to abate and statement of costs shall run with the land. The City, at its sole option, may record a notice to abate or statement of costs with the Maricopa County Recorder and thereby cause compliance by an entity thereafter acquiring such property. When the property is brought into compliance, a satisfaction of notice to abate shall be filed with the Maricopa County Recorder. (3465)~~

8-2-13: (RESERVED)

8-2-13: IMMINENT HAZARD:

~~(A) If a situation presents an imminent hazard, the City may issue a notice to abate directing the owner, occupant, operator, responsible party, or agent to immediately take such action as is appropriate to correct or abate the emergency described in the notice. In addition, the City may act immediately to correct or abate the emergency. The City may commence an action in Superior Court to enjoin the owner or occupant to abate the imminent hazard. The Development Services Manager may require that particulate pollution actions causing the imminent hazard be stopped immediately. The City may undertake all appropriate means to stop the actions of the owner, operator, responsible party, or agent that are causing the imminent hazard. In the event the City is unable to contact the owner, occupant, agent, or responsible party despite reasonable efforts to do so, it in no way affects the City's right under this Section to correct or abate the hazard itself. (3465,3766)~~

- ~~(B) The City may recover its costs incurred in abating an imminent hazard under this Section in the same manner as provided for in Sections 8-2-10(C) and 8-2-12. The property owner may appeal the City's imminent hazard action under this Section or the City's statement of costs for an emergency abatement in the same manner as provided for in Section 8-2-11. (3465)~~
- ~~(C) A person who causes an imminent hazard may be guilty of a criminal misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment. (3465)~~

8-2-14: HABITUAL OFFENDER:

- (A) A PERSON WHO COMMITS A VIOLATION OF THIS CHAPTER AFTER PREVIOUSLY HAVING BEEN FOUND RESPONSIBLE FOR COMMITTING CIVIL VIOLATIONS OF THIS CHAPTER ON 3 SEPARATE DATES AND WITHIN A 36 MONTH PERIOD, WHETHER BY ADMISSION, BY PAYMENT OF THE FINE, BY DEFAULT, OR BY JUDGMENT AFTER HEARING, SHALL BE GUILTY OF A CLASS 1 CRIMINAL MISDEMEANOR. THE MESA CITY PROSECUTOR IS AUTHORIZED TO FILE A CLASS 1 CRIMINAL MISDEMEANOR COMPLAINT IN THE MESA CITY COURT AGAINST HABITUAL OFFENDERS. FOR PURPOSES OF CALCULATING THE 36 MONTH PERIOD UNDER THIS PARAGRAPH, THE DATES OF THE COMMISSION OF THE OFFENSES ARE THE DETERMINING FACTOR.**
- (B) UPON CONVICTION OF A VIOLATION OF THIS SECTION, THE COURT MAY IMPOSE A SENTENCE AUTHORIZED BY THE LAWS OF THE STATE OF ARIZONA FOR A CLASS 1 MISDEMEANOR, INCLUDING INCARCERATION NOT TO EXCEED 6 MONTHS IN JAIL OR A FINE NOT TO EXCEED \$2,500, EXCLUSIVE OF PENALTY ASSESSMENTS PRESCRIBED BY LAW, OR BOTH. THE COURT SHALL ORDER A PERSON WHO HAS BEEN CONVICTED OF A VIOLATION OF THIS SECTION TO PAY A FINE OF NOT LESS THAN \$500 FOR EACH COUNT UPON WHICH A CONVICTION HAS BEEN OBTAINED AND BE PLACED ON PROBATION FOR UP TO 36 MONTHS. THE COURT MAY REDUCE SUCH FINES TO \$250 FOR EACH COUNT UPON WHICH A CONVICTION HAS BEEN OBTAINED PROVIDED ALL VIOLATIONS HAVE BEEN ABATED AND THE SITE IS IN COMPLIANCE WITH ALL SECTIONS OF THIS CHAPTER WITHIN 90 DAYS OF SENTENCING.**
- (C) EVERY ACTION OR PROCEEDING UNDER THIS SECTION SHALL BE COMMENCED AND PROSECUTED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA RELATING TO CRIMINAL MISDEMEANORS AND THE ARIZONA RULES OF CRIMINAL PROCEDURE.**

8-2-14: CIVIL VIOLATIONS AND CITATION:

- ~~(A) A civil action for violations of this Article may be commenced by issuance of a citation. (3465)~~
- ~~(B) The citation will be substantially in the form established by the Director of Environmental Programs. The citation shall advise the responsible party of the violation(s) committed, either by written description of the violations or by designation of the City Code Section that was violated. The Civil Hearing Officer may permit amendments to the citation if substantial rights of the responsible party are not thereby prejudiced. The citation shall direct the responsible party to pay a specified fine within the period specified on the citation or to appear before the Civil Hearing Officer within the time period specified on the citation. The amount of the fine shall be determined by the City based on the circumstances of the violation(s) and shall be no less than twenty-five dollars (\$25.00) and no greater than five hundred dollars (\$500.00) per violation. The citation shall be served by personal service or by serving the citation pursuant to A.R.S. §9-500.21 or by attaching the citation to the vehicle of the responsible party. (3465,4074)~~
- ~~(C) The responsible party shall, within the time period specified on the citation, either pay the fine or appear in person or through an attorney before the Civil Hearing Officer and admit or deny the allegations contained in the citation. If the responsible party pays the fine, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If the responsible party appears and admits the allegations,~~

~~the Civil Hearing Officer shall enter judgment against the responsible party in the amount of the fine designated in the citation. If the responsible party appears and denies the allegations contained in the citation, the Civil Hearing Officer shall set the matter for hearing. (3465,4074)~~

- ~~(D) If a person served with a citation fails to pay the fine and to appear on or before the time directed to appear or at the time set for hearing by the Civil Hearing Officer, the allegations in the complaint shall be deemed admitted, and the Civil Hearing Officer shall enter a finding of responsible and a judgment for the City and impose a civil penalty sanction. (3465)~~
- ~~(E) All proceedings before the Civil Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Article by a preponderance of the evidence. No prehearing discovery shall be permitted, except under extraordinary circumstances as determined by the Civil Hearing Officer. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Rules of Procedure for Special Actions of the Arizona Supreme Court, Volume 17B of the Arizona Revised Statutes. (3465)~~
- ~~(F) Any civil fine or judgment imposing a civil penalty sanction issued pursuant to this Article shall constitute a lien against the real property of the responsible party that may be perfected by recording a copy of the fine or judgment with the Maricopa County Recorder. Any judgment for civil fines or penalties pursuant to this Article may be collected as any other civil judgment. (3465)~~

8-2-15: FAILURE TO PROVIDE EVIDENCE OF IDENTITY:

A PERSON WHO FAILS OR REFUSES TO PROVIDE EVIDENCE OF HIS IDENTITY TO A DULY AUTHORIZED AGENT OF THE CITY UPON REQUEST, WHEN SUCH AGENT HAS REASONABLE CAUSE TO BELIEVE THE PERSON HAS COMMITTED A VIOLATION OF THIS CHAPTER, IS GUILTY OF A MISDEMEANOR. EVIDENCE OF IDENTITY UNDER THIS SECTION SHALL CONSIST OF A PERSON'S FULL NAME, RESIDENCE ADDRESS, AND DATE OF BIRTH.

8-2-15: CIVIL PENALTIES:

~~Except as provided elsewhere in this Code, upon a finding that a person is responsible for a civil violation of this Article, the Civil Hearing Officer shall impose a civil penalty sanction of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000.00) per violation. (3465,4820)~~

8-2-16: ABATEMENT:

(A) IN ADDITION TO OR IN LIEU OF FILING A CIVIL CITATION OR CRIMINAL COMPLAINT, THE CITY MAY SERVE A NOTICE TO ABATE ANY VIOLATION OF THIS CHAPTER.

(B) THE NOTICE TO ABATE SHALL SET FORTH THE FOLLOWING INFORMATION:

- 1. THE RESPONSIBLE PARTY HAS 30 CALENDAR DAYS FROM SERVICE OF THE NOTICE TO ABATE OR CORRECT THE VIOLATION.**
- 2. IDENTIFICATION OF THE PROPERTY IN VIOLATION BY STREET ADDRESS, IF KNOWN, AND IF UNKNOWN, THEN BY LEGAL DESCRIPTION OF THE PROPERTY OR BY MARICOPA COUNTY BOOK, MAP, AND PARCEL NUMBER.**
- 3. STATEMENT OF THE VIOLATION IN SUFFICIENT DETAIL TO ALLOW A REASONABLE PERSON TO IDENTIFY AND CORRECT THE VIOLATION(S).**
- 4. REINSPECTION DATE AND TIME.**
- 5. NAME, BUSINESS ADDRESS, AND BUSINESS PHONE NUMBER OF THE CITY**

INSPECTOR WHO ISSUED THE NOTICE TO ABATE.

6. A WARNING STATING THAT IF THE VIOLATIONS ARE NOT CORRECTED WITHIN THE 30 CALENDAR DAY PERIOD, THE CITY MAY ABATE THE PROBLEM ITSELF OR BY PRIVATE CONTRACTOR, ASSESS THE RESPONSIBLE PARTY FOR THE COST OF SUCH ABATEMENT, AND RECORD A LIEN ON THE PROPERTY FOR THE ASSESSMENT.

7. HEARING PROCEDURES.

8. STATEMENT INDICATING THAT THE 30 CALENDAR DAY NOTICE SET FORTH IN THIS SECTION SHALL NOT APPLY TO EMERGENCY ABATEMENTS PURSUANT TO THIS CHAPTER.

(C) IF THE RESPONSIBLE PARTY OR OTHER PERSON SERVED A NOTICE TO ABATE BY THE CITY PURSUANT TO THIS CHAPTER FAILS TO COMPLY WITH SUCH NOTICE; THE CITY MAY CORRECT OR ABATE THE CONDITIONS SUBJECT TO THE NOTICE IF THOSE CONDITIONS CONSTITUTE A HAZARD. IF THE CITY CORRECTS OR ABATES THOSE CONDITIONS, THE CITY MANAGER OR DESIGNEE MAY PREPARE A VERIFIED STATEMENT AS TO THE ACTUAL COST OF CORRECTING OR ABATING THE VIOLATION, INCLUDING COSTS OF INSPECTION AND OTHER CITY-INCURRED COSTS ASSOCIATED WITH ABATING THE VIOLATION. THE STATEMENT SHALL BE SERVED PURSUANT TO THE ARIZONA RULES OF CIVIL PROCEDURE. THAT STATEMENT SHALL FURTHER SET FORTH THE FOLLOWING:

1. THAT THE STATEMENT OF COSTS IS AN ASSESSMENT UPON THE LOTS AND TRACTS OF LAND FROM WHICH THE CITY CORRECTED OR ABATED THE VIOLATION.

2. THAT THE PARTY HAS 15 CALENDAR DAYS FROM THE DATE OF DELIVERY OR MAILING OF THE STATEMENT TO PAY.

3. IN THE EVENT PAYMENT IS NOT RECEIVED IN 15 CALENDAR DAYS, THE CITY WILL PLACE A LIEN ON THE PROPERTY IN THE AMOUNT OF THE ASSESSMENT.

4. APPEAL PROCEDURES.

(D) THE NOTICE TO ABATE AND THE STATEMENT OF ABATEMENT COSTS SHALL BE SERVED TO THE RESPONSIBLE PARTY PURSUANT TO THE ARIZONA RULES OF CIVIL PROCEDURE.

8-2-16: SEPARATE VIOLATIONS:

~~Each violation of this Article or the failure to perform any act or duty required by this Article or by the Civil Hearing Officer shall constitute a separate civil offense. Multiple violations may be cited on the same day. (3465)~~

8-2-17: REQUEST FOR ABATEMENT HEARING:

THE RESPONSIBLE PARTY RECEIVING A NOTICE TO ABATE UNDER THIS CHAPTER OR A STATEMENT OF COSTS INCURRED BY THE CITY IN ABATING A HAZARD MAY APPEAL BY REQUESTING IN WRITING A HEARING AND BY SERVING SUCH A REQUEST TO THE DEVELOPMENT AND SUSTAINABILITY DEPARTMENT WITHIN 15 CALENDAR DAYS OF SERVICE OF THE NOTICE TO ABATE OR THE STATEMENT OF COSTS. THE HEARING SHALL BE HELD BEFORE THE CIVIL HEARING OFFICER AS SOON AS PRACTICABLE AFTER THE FILING OF THE REQUEST. AN APPEAL FROM FINAL JUDGMENTS OF THE CIVIL HEARING OFFICER MAY BE TAKEN PURSUANT TO THE ARIZONA RULES OF CIVIL PROCEDURE FOR SPECIAL ACTIONS. IF NO WRITTEN AND TIMELY REQUEST FOR HEARING IS MADE UNDER THIS SECTION TO DEVELOPMENT AND SUSTAINABILITY DEPARTMENT, THEN THE NOTICE OF ABATEMENT OR STATEMENT OF COSTS IS FINAL AND BINDING.

~~8-2-17: HABITUAL OFFENDER:~~

- ~~(A) A person who commits a violation of this Article after previously having been found responsible for committing three (3) or more civil violations of this Article within a twenty-four (24) month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be guilty of a criminal misdemeanor. The Mesa City Prosecutor is authorized to file a criminal misdemeanor complaint in the Mesa City Court against habitual offenders who violate this Section. For purposes of calculating the twenty-four (24) month period under this paragraph, the dates of the commission of the offenses are the determining factor. (3465)~~
- ~~(B) Upon conviction of a violation of this Section, the court may impose a sentence of incarceration not to exceed six (6) months in jail or a fine not to exceed two thousand five hundred dollars (\$2,500.00), exclusive of penalty assessments prescribed by law, or both. The court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than five hundred dollars (\$500.00) for each count upon which a conviction has been obtained. A judge shall not grant probation to or suspend any part or all of the imposition or execution of any sentence required by this Subsection except on the condition that the person pay the mandatory minimum fines as provided in this Subsection. (3465)~~
- ~~(C) Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure. (3465)~~

8-2-18: RECORDING AN ABATEMENT VIOLATION:

THE NOTICE TO ABATE AND STATEMENT OF COSTS SHALL RUN WITH THE LAND. THE CITY, AT ITS SOLE OPTION, MAY RECORD A NOTICE TO ABATE OR STATEMENT OF COSTS WITH THE MARICOPA COUNTY RECORDER AND THEREBY CAUSE COMPLIANCE BY A PERSON THEREAFTER ACQUIRING SUCH PROPERTY. WHEN THE PROPERTY IS BROUGHT INTO COMPLIANCE, A SATISFACTION OF NOTICE TO ABATE SHALL BE FILED WITH THE MARICOPA COUNTY RECORDER.

~~8-2-18: FAILURE TO PROVIDE EVIDENCE OF IDENTITY:~~

~~A person who fails or refuses to provide evidence of his identity to a duly authorized agent of the City upon request, when such agent has reasonable cause to believe the person has committed a violation of this Article, is guilty of a criminal misdemeanor. Evidence of identity under this Section shall consist of a person's full name, residence address, and date of birth. (3465)~~

8-2-19: EMERGENCY ABATEMENT:

(A) IF A SITUATION PRESENTS AN IMMINENT HAZARD TO LIFE OR PUBLIC SAFETY, THE CITY MAY ISSUE A NOTICE TO ABATE DIRECTING THE RESPONSIBLE PARTY TO IMMEDIATELY TAKE SUCH ACTION AS IS APPROPRIATE TO CORRECT OR ABATE THE EMERGENCY DESCRIBED IN THE NOTICE. IN ADDITION, THE CITY MAY ACT IMMEDIATELY TO CORRECT OR ABATE THE EMERGENCY ITSELF OR MAY COMMENCE AN ACTION IN SUPERIOR COURT TO ENJOIN THE RESPONSIBLE PARTY TO ABATE THE IMMINENT HAZARD. IN THE EVENT THE CITY IS UNABLE TO CONTACT THE RESPONSIBLE PARTY DESPITE REASONABLE EFFORTS TO DO SO, IT IN NO WAY AFFECTS THE CITY'S RIGHT UNDER THIS SECTION TO CORRECT OR ABATE THE EMERGENCY ITSELF.

(B) THE CITY MAY RECOVER ITS COSTS INCURRED IN ABATING AN IMMINENT HAZARD UNDER THIS SECTION IN THE SAME MANNER AS PROVIDED FOR IN SECTION 8-2-16(C). THE RESPONSIBLE PARTY MAY APPEAL THE CITY'S EMERGENCY ABATEMENT ACTION UNDER THIS SECTION OR THE CITY'S STATEMENT OF COSTS FOR AN EMERGENCY ABATEMENT IN THE SAME MANNER AS PROVIDED FOR IN SECTION 8-2-17.

~~8-2-19: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE:~~

~~Any construction permit or license issued by the City which authorizes work resulting in an alleged~~
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violation of this Article may be suspended pending abatement of said violation or final resolution of a civil hearing of the matter. (3465)

8-2-20: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE:

ANY CONSTRUCTION PERMIT OR LICENSE ISSUED BY THE CITY WHICH AUTHORIZES WORK RESULTING IN AN ALLEGED VIOLATION OF SECTIONS 8-2-3, 8-2-4 OR 8-2-5 OF THIS CHAPTER MAY BE SUSPENDED PENDING ABATEMENT OF SAID VIOLATION OR FINAL RESOLUTION OF A CIVIL HEARING OF THE MATTER.

SECTION 2: Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconditional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof, so long as the intent of the remaining portions is clear.

SECTION 3: Repeal of Conflicting Ordinances.

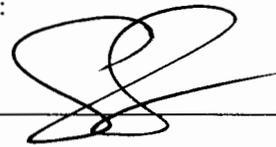
All ordinances and parts of ordinances in direct conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference are hereby repealed upon this Ordinance taking effect.

SECTION 4: Effective Dates.

All amendments of this Ordinance shall take effect thirty (30) days after its adoption and is accordingly so ordained.

PASSED AND ADOPTED by the City Council of the City of Mesa, Arizona, this 12th day of September, 2011.

APPROVED:



ATTEST:


City Clerk