

Staff Summary Report



Council Meeting Date: 11/08/07

Agenda Item Number: _____

SUBJECT: This is the **introduction and first public hearing** to amend Chapter 21 of the Tempe City Code relating to Nuisances and Property Enhancement. **The second public hearing set for December 6, 2007.**

DOCUMENT NAME: 20071108cdjk01 **TCC CH 21 – NUISANCES (0503-21)** Ordinance No. 2007.80

SUPPORTING DOCS: No

COMMENTS: Request for amendments to Tempe City Code, Chapter 21, Nuisances and Property Enhancement for new regulations addressing Habitual Offenders and other miscellaneous revisions.

PREPARED BY: Jan Koehn, Code Enforcement Administrator (350-8076)

REVIEWED BY: Neil Calfee, Community Development Deputy Manager (350-2912)

LEGAL REVIEW BY: Dave Park, Assistant City Attorney (350-8907)

FISCAL NOTE: N/A

RECOMMENDATION: Staff recommends adoption of Ordinance No. 2007.80

ADDITIONAL INFO: N/A

ORDINANCE NO. 2007.80

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 21, TEMPE CITY CODE, RELATING TO NUISANCES AND PROPERTY ENHANCEMENT BY AMENDING SECTIONS 21-1, 21-3, 21-4, 21-25, 21-26, 21-35, 21-37, 21-42, 21-43 AND 21-53.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Section 21-1 of the Tempe City Code is hereby amended to read as follows:

Sec. 21-1. Definitions.

For the purposes of this article, the following words, terms and phrases shall have the meaning respectively ascribed to them as follows, unless the context clearly indicates otherwise:

Animal means any types of animals, both domesticated and wild, male, female or neutered, singular and plural.

Architectural pool means a constructed or excavated exterior area designed to hold water on a continuous basis other than a swimming pool or a spa.

Deteriorated or *deterioration* means a lowering in quality of the condition or appearance of a building, structure or premises, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or any other evidence of physical decay, neglect, damage or lack of maintenance.

Dumping ground means any area that is used for the storing, leaving, or abandoning of refuse, garbage, waste, earth, rock or debris, including construction, agricultural, landscape, residential, commercial and industrial solid waste.

Garage sale means and includes yard sales, carport sales or similar types of sales on the seller's own premises, involving the sale of used or second hand tangible personal property customarily found in and about the residence, and not including property acquired for resale and not for personal use.

HABITUAL OFFENDER MEANS ANY PERSON THAT ON AT LEAST ONE PRIOR OCCASION WITHIN A TWELVE (12) MONTH PERIOD OF ADJUDICATION HAS HAD:

- (1) AT LEAST ONE CONVICTION, EITHER CIVIL OR CRIMINAL, OR A DEFAULT JUDGMENT ENTERED, OF A VIOLATION OF THIS CHAPTER; OR

(2) HAS HAD ABATEMENT ACTION APPROVED AGAINST ANY PROPERTY THE HABITUAL OFFENDER OWNS.

Improved area means an area having a surface of asphalt, concrete, crushed rock, gravel, masonry or wood, maintained free of all vegetation and contained within a permanent curb or border, constructed of asphalt, concrete, masonry, metal, wood or other approved permanent material secured to or embedded in the ground, delineating the improved area from the remainder of the yard area.

Inoperable vehicle means a vehicle that is physically incapable of its intended operation, or unable to be safely operated at that time, including but not limited to vehicles on blocks or similar devices, with a deflated tire or tires, or from which the engine, wheels or tires have been removed.

Junkyard means a place used for the storage, keeping or abandonment of junk, stripped, substantially damaged, discarded or dismantled vehicles or machinery, or parts thereof, scrap metals, rags, scrap materials or articles that are worn out or fit to be discarded; including places used for the wrecking, disassembling, repair or rebuilding of vehicles or machinery of any kind. The term junk as used in this definition does not include ongoing restoration projects.

Landscaping means the combination of elements such as trees, shrubs, ground covers, vines and other organic and inorganic material for the express purpose of creating an attractive and pleasing environment.

Off-road vehicle means a recreational vehicle designed for off-road use and not required to be licensed, including without limitation all-terrain vehicles, motocross cycles, sand rails and dune buggies.

Ongoing restoration project means a project involving a single vehicle or machinery that is kept in a clean and neat condition during the term of active repair and rebuilding.

Slum-like means the unsightly condition of a building, structure or premises characterized by deterioration or other similar conditions regardless of the condition of other properties in the neighborhood.

Street or highway means the entire width between the boundary lines of every way publicly owned or maintained when any part thereof is open to the use of the public for the purpose of vehicular travel.

Vehicle means a machine propelled by power other than human power designed to travel along the ground, water or air to transport persons, property or machinery, and shall include, without limitation, automobile, truck, trailer, motorcycle, tractor, boat or aircraft.

Section 2. That Section 21-3 of the Tempe City Code is hereby amended to read as follows:

Sec. 21-3. Enumerated violations.

(a) It shall be unlawful and a violation of this code for any person to commit a nuisance or willfully omit to perform any legal duty relating to the removal of a nuisance.

(b) A nuisance includes any one or more of the following conditions:

- (1) Filthy, littered, debris or trash-covered exterior areas, including exterior areas under any roof not enclosed by the walls, doors or windows of any building; including, but not limited to, areas that contain items such as cans, bottles, wood, metal, plastic, rags, boxes, paper, tires, auto parts; unused, inoperable, worn out or discarded appliances or other household items; lumber, scrap iron, tin and other metal not neatly piled, or anything whatsoever that is or may become a hazard to public health and safety, or that may harbor insect, rodent or vermin infestation. This subsection shall not be deemed to include items kept in covered bins or metal receptacles approved by the county health officer or this code or any other ordinance of the city;
- (2) Exterior areas used or maintained as junkyards or dumping grounds, except:
 - a. Any automobile wrecking yard or other junkyard where the same are permitted by the city zoning regulations; or
 - b. The disassembling, repair, rebuilding, storage or keeping of vehicles, machinery or any of the parts thereof on any farm or ranch where such disassembling, repair, rebuilding, storage or keeping are customary and incidental to such farming or ranching activities;
- (3) Any inoperable or unregistered vehicle, or parts thereof, outside of or under a roof area not enclosed by walls, doors or windows of any building on any lot, except the safe and neat keeping of:
 - a. Substantially complete inoperable or unregistered vehicles with inflated tires under the roof area of any building;
 - b. A vehicle undergoing repair, titled to the owner or resident of the property, provided that the repair is complete within fourteen (14) days after the repair was begun, provided that not more than three (3) such fourteen (14) day repairs will be permitted in any twelve (12) month period;
 - c. Not more than two (2) ongoing restoration projects or inoperable or unregistered vehicles in a backyard area, screened by a substantially

opaque fence at a minimum height of five (5) feet or the height of the vehicles, whichever is more, provided that any fence constructed or modified pursuant to this subsection must meet any and all other requirements of the city code;

- d. Lawful commercial activities involving vehicles as allowed by the Zoning and Development Code; or
 - e. Operable, off-road vehicles, under the roof area of any building, or in a backyard area, screened by a substantially opaque fence at a minimum height of five (5) feet or the height of the vehicles, whichever is more, provided that any fence constructed or modified pursuant to this subsection must meet any and all other requirements of the city code;
- (4) To leave or permit to remain outside of any single-family or multifamily dwelling or accessory building any camper, vehicle, or part thereof in any portion of the front or side area of the building visible from the street that is not on an improved area designed or intended for such use. An improved area shall:
- a. Be contiguous to, PARALLEL WITH, and share an access point with, the required driveway;
 - b. HAVE A CONSISTENT LENGTH AND WIDTH, BUT NOT NECESSARILY THE SAME DIMENSIONS OF THE PARKING AREA OR REQUIRED DRIVEWAY;
 - b c. Be no greater than thirty-five percent (35%) of the front and side areas visible from the street;
 - e d. Be a minimum of three (3) inches in depth if gravel, crushed rock or other aggregate. If using materials other than asphalt or concrete, an improved surface containing material such as gravel or crushed rock must be contained within a permanent border, imbedded in the ground, delineating the improved area from the remainder of the yard; and
 - d e. Be maintained free of all vegetation, including, but not limited to grasses, trees and bushes.
- (5) The storing or leaving of any machinery or equipment designed for or used by contractors or builders for commercial purposes, except where permitted by the city zoning regulations;
- (6) Excessive animal waste that is not securely protected from insects and the elements, or that is kept or handled in violation of this code or any other ordinance of the city or the county; provided, that nothing in this subsection shall be deemed to prohibit the use of such animal waste on any farm or ranch

in such a manner and for such purposes as are compatible with customary methods of good husbandry or cultivation;

- (7) Any object, building, tree, bush or vehicle that interferes with, obstructs, tends to obstruct, or renders dangerous the free passage, use or vision in the customary manner of any sidewalk, street or highway in the city;
- (8) Any landscaping, visible from public property, that is substantially dead, damaged, or characterized by uncontrolled growth, or presents a deteriorated or slum-like appearance; uncultivated plants, weeds, tall grass, uncultivated shrubs or growth (whether growing or otherwise) higher than twelve (12) inches; or any dead trees, bushes, shrubs or portions thereof, including stumps; or any palm or similar type tree having dead or dry fronds descending downward from the base of the lowest living frond more than eight (8) feet or dry fronds longer than five (5) feet and closer than eight (8) feet to the ground;
- (9) Any dangerous, deteriorated, abandoned, partially destroyed or unfinished building, addition, appendage or other structure, or any building in violation of the uniform building code as adopted by the city, and any vacated or abandoned building not securely closed at all times; any wood, metal or other material used for securing a vacated or abandoned building must be compatible with the color of the building;
- (10) Any putrid, unsound or unwholesome bones, meat, hides, skins or the whole or any part of any dead animal, butcher's trimmings and offal, or any waste vegetable or animal matter in any quantity, garbage, human excreta, sewage or other offensive substances; provided, that nothing contained in this subsection shall prevent the temporary retention of waste in receptacles in the manner approved by the health officer of the county or this code or any other ordinance of the city;
- (11) The erection, continuance or use of any building, room or other place in the city that, by noxious exhalations, including but not limited to smoke, soot, dust, fumes or other gases, offensive odors or other annoyances, is discomforting or offensive or detrimental to the health of individuals or of the public;
- (12) Burning or disposal of refuse, sawdust or other material in such a manner as to cause or permit ashes, sawdust, soot or cinders to be cast upon the sidewalk, streets, alleys or highways of the city, or to cause or permit the smoke, ashes, soot or gasses arising from such burning to constitute a potential hazard to public health, safety and welfare; provided, that this subsection shall not apply where the person responsible for the action has properly obtained a fire permit from the city fire department or the county health officer;

- (13) Any unguarded or abandoned excavation, pit, well or hole that may constitute a threat to public health, safety and welfare; or any well, cellar, pit or other excavation of more than two (2) feet in depth, on any unenclosed lot, without substantial curbing, covering or protection;
- (14) To leave or permit to remain exposed outside on any property, or within any unoccupied or abandoned building, dwelling or other structure or in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or other container that has an airtight door or lid, snaplock or other locking device that may not be released from the inside, without first removing such door or lid, snaplock or other locking device from such ice box, refrigerator or container;
- (15) Any wall or fence that is missing blocks, boards or other material, or is otherwise deteriorated so as to constitute a hazard to persons or property. THIS INCLUDES BUT IS NOT LIMITED TO, LEANING OR DAMAGED FENCES, FENCES MISSING SLATS OR BLOCKS OR ANY OTHER MATERIALS THAT ARE OTHERWISE BROKEN OR DAMAGED IN SUCH AMOUNTS AS TO PRESENT A DETERIORATED OR SLUM-LIKE APPEARANCE. ALL REPLACEMENT MATERIALS SHALL BE UNIFORM, COMPATIBLE AND CONSISTENT WITH THE DESIGN THEREOF;
- (16) Any swimming pool areas that are not enclosed ~~as required by chapter 31 of this code;~~ BY A FENCE OF AT LEAST FIVE (5) FEET IN HEIGHT AND EQUIPPED WITH SELF-CLOSING, SELF-LATCHING GATE(S), OR PADLOCKED AT ALL TIMES. ANY OPENINGS IN THE FENCING SHALL BE OF A SIZE TO PROHIBIT A SPHERICAL OBJECT FOUR (4) INCHES IN DIAMETER FROM PASSING THROUGH OR UNDER THE FENCE OR GATE; or any swimming pool, architectural pool or spa that creates a health hazard, harbors insect infestation or presents a deteriorated appearance;
- (17) Making, causing or permitting to be made any vibration or artificial illumination of such intensity as to interfere substantially and unnecessarily with the use and enjoyment of public or private property by the public, or as to constitute a hazard or threat to the public health, safety or welfare of the people of the city;
- (18) Willfully or negligently permitting or causing the escape or flow of water into the public right-of-way in such quantity as to cause flooding, to impede vehicular or pedestrian traffic, to create a hazardous condition for such traffic, or to cause damage to the public streets or alleys of the city through the failure or neglect to operate or maintain properly any water facility or device, including, but not limited to, swimming pools, architectural pools, spas, sprinklers, hoses, pipes, ditches, standpipes, berms, valves and gates; or

- (19) The keeping or harboring of any dog or other animal that by frequent or habitual howling, yelping, barking, crowing or the making of other noises, annoys or disturbs a neighborhood or any number of persons; provided, that a complaint for a violation of this subsection shall not be initiated, unless there are at least three (3) written statements from witnesses as to the facts constituting the offense; OR
- (20) TO LEAVE OR PERMIT TO REMAIN ON ANY PROPERTY, AREAS INFESTED WITH INSECTS OR RODENTS INCLUDING, BUT NOT LIMITED TO: BEES, WASPS, HORNETS, YELLOW JACKETS, MICE, RATS, OR ROACHES, IN AN AMOUNT THAT MAY BECOME A HAZARD TO PUBLIC HEALTH OR SAFETY.

(c) Nothing in subsections (1) through (5) of this section shall be deemed to apply to safe and neat outdoor accessory storage, use or repair of items customarily associated with the lawful use of such property in the city, screened by a substantially opaque fence at a minimum height of five (5) feet or the height of the storage, use or repair, whichever is more, provided that any fence constructed or modified pursuant to this subsection must meet any and all other requirements of the city code.

Section 3. That Section 21-4 of the Tempe City Code is hereby amended to read as follows:

Sec. 21-4. Other enumerated violations.

(A) It shall be unlawful and a violation of this code for any person to erect, maintain, use, place, deposit, cause, allow, leave or permit to remain any of the following:

- (1) In a residential district, any vehicle or trailer that was designed or is used for any commercial purpose, of more than one-ton capacity or in excess of twenty-one (21) feet in length; or two (2) or more commercial vehicles, regardless of size;
- (2) For any residential property:
 - a. Any wood surfaces unprotected from the elements by paint or other protective treatment, except those naturally resistant to decay;
 - b. Exterior painted surfaces with loose, cracked, scaling, chipping or peeling paint, visible from a public area, in such amounts as to present a deteriorated or slum-like appearance;
 - c. Broken, rotted, split, curled or missing roofing material in such amounts as to present a deteriorated or slum-like appearance; ~~or~~

- d. Replacement materials and paint used to repair or repaint exterior surfaces of a building shall be visually compatible with the remainder of the materials and paint on the exterior of the structure;
 - E. GLAZED AREAS NOT IN SOUND CONDITION OR MAINTAINED FREE OF MISSING, LOOSE, CRACKED OR BROKEN GLASS; OR
 - F. EXTERIOR DOORS, GARAGE DOORS, DOOR HARDWARE AND DOOR FRAMES NOT MAINTAINED IN SOUND CONDITION, OR KEPT FREE FROM HOLES, BREAKS, AND CRACKS; OR ANY EXTERIOR DOOR INCAPABLE OF FUNCTIONING AS INTENDED BY ITS DESIGN.
- (3) Outside of any building, any required address numbers which are not mounted to the building in a permanent and stationary manner, or are obstructed by trees, shrubs, or anything that would tend to hide or obscure the numbers, or are not visible at all times from public access areas to the dwelling; or
 - (4) Conducting garage sales from any property in excess of five (5) days in any six (6) month period, or between the hours of 8:00 p.m. and 7:00 a.m., or the sale of property acquired for resale and not for personal use in any residential district at any time.

(B) IT SHALL BE A SEPARATE CITABLE OFFENSE TO BE A HABITUAL OFFENDER OF THIS CODE.

Section 4. That Section 21-25 of the Tempe City Code is hereby amended to read as follows:

Sec. 21-25. Owners of rental property, registration.

(a) An owner of residential rental property within this city shall maintain with the Maricopa County Assessor information required by this section in a manner to be determined by the assessor. The owner shall update any information required by this section within ten (10) days after a change in the information occurs. The following information shall be maintained:

- (1) The name, address and telephone number of the property owner;
- (2) If the property is owned by a corporation, limited liability company, partnership, limited partnership, trust or real estate investment trust, the name, address and telephone number of any of the following:
 - a. For a corporation, a corporate officer;
 - b. For a partnership, a general partner;
 - c. For a limited liability company, the managing or administrative member;

- d. For a limited partnership, a general partner;
 - e. For a trust, a trustee; or
 - f. For a real estate investment trust, a general partner or an officer.
- (3) The street address and parcel number of the property; and
- (4) The year the building was built.

(b) An owner of residential rental property who lives outside this state shall designate and record with the assessor an agent who lives in this state and who will accept legal service on behalf of the owner. The owner shall designate the agent in a manner to be determined by the assessor. The information shall include the name, address and telephone number of the agent.

(c) Residential rental property shall not be occupied if the information required by this section is not on file with the county assessor. This subsection ~~does not affect~~ APPLIES TO any existing lease AND TO ANY NEW LEASE AFTER AUGUST 25, 2004.

(d) All records, files and documents that are required by this section are public records.

(e) A person who fails to comply with any provision of this section shall be cited pursuant to § 21-42(b). Violations of this subsection shall be assessed a civil penalty of one thousand dollars (\$1,000), plus an additional one hundred dollars (\$100) for each month after the date of the original violation until compliance occurs. The court shall not suspend any portion of the civil penalty provided by this subsection.

(f) Notwithstanding subsection (e) of this section, if a person complies within ten (10) days after receiving the complaint that notices the violation, the court shall dismiss the complaint and shall not impose a civil penalty.

Section 5. That Section 21-26 of the Tempe City Code is hereby amended to read as follows:

Sec. 21-26. Information furnished to tenants.

(a) *Informational material furnished to owners.* The city shall provide informational material explaining the Rental Housing Code. The city shall make such material available to local owners, agents and managers of rental housing units without charge.

(b) *Informational material furnished to tenants.* When such material is made available by the city, no owner, agent or manager shall lease, rent or otherwise make available for occupancy by tenants any rental housing unit without furnishing to the tenant(s), prior to the time of occupancy, a copy of said materials.

(c) *Distribution of material; multiple tenants.* In the event the rental housing unit is being leased or rented to more than one tenant, it shall be sufficient to offer a single copy of the material for each rental housing unit.

(d) *Lease renewals.* For the purposes of this section, the renewal of a lease or rental agreement shall be considered the same as the making of a new lease or rental agreement; however, if an owner, agent or manager has previously furnished a tenant of a rental housing unit a copy of the material, the owner, agent or manager shall not be required to furnish another copy of the material upon the renewal of the lease or rental agreement, unless one is requested by the tenant.

(e) *Rental or lease agreement requirements.* No owner, agent or manager of a rental housing unit shall execute a lease or rental agreement or otherwise make available for occupancy by tenants any rental housing unit, unless a statement is contained in the lease or rental agreement, in boldface type no smaller than the remainder of the agreement, in substantially the following form: "Upon the execution of a lease or rental agreement for a rental housing unit, a tenant is entitled to receive a copy of the informational material provided by the City of Tempe concerning rental housing standards. By executing this lease or rental agreement, the tenant acknowledges receipt of such material."

~~(f) *Civil violation.* Violations of this section shall be punishable as a civil sanction in accordance with the provisions of this chapter.~~

Section 6. That Section 21-35 of the Tempe City Code is hereby amended to read as follows:

Sec. 21-35. Doors; windows; ventilation.

(a) *General provision.* Every rental housing unit should have doors and windows which provide adequate natural light and ventilation to permit normal indoor activities and at the same time support the health and safety of the occupants while providing protection from the elements and privacy for the occupants.

(b) *Habitable rooms; natural light.* Every habitable room within a rental housing unit shall have at least one exterior glazed opening, facing directly to the outside, to provide natural light. The total glazed area for each habitable room shall be not less than ten (10) square feet. Kitchens and kitchen areas shall not be required to meet the glazed exterior opening requirement.

(c) *Habitable rooms; ventilation.* Every habitable room within a rental housing unit shall have at least one openable exterior opening, vented directly to the outside air, to provide natural ventilation. The total area of openable venting for each habitable room shall be not less than five (5) square feet. Habitable rooms, except those used for sleeping, shall not be required to meet the openable exterior opening requirement if mechanical ventilation is provided. Kitchens and kitchen areas shall not be required to meet the openable exterior opening requirement if mechanical ventilation is provided.

(d) *Other rooms; ventilation.* Every bathroom, flush toilet room and laundry room shall have at least one openable exterior opening, vented directly to the outside air, to provide natural ventilation. The total area of openable venting shall be not less than one and one-half (1½) square feet. Bathrooms, flush toilet rooms and laundry rooms shall not be required to meet the openable exterior opening requirement if mechanical ventilation is provided.

(e) *Screened openings.* Any rental housing unit which is cooled by evaporative cooling and is not equipped with upducts or other similar venting, shall have at least one openable exterior opening which is screened. All required screens shall be free from tears, holes or imperfections of the frame that could admit insects and other vermin detrimental to the health of the occupants. Any screens which are provided by the owner, agent or manager shall be maintained in sound condition and in good working order.

(f) *Glazing.* Glazed areas shall be soundly glazed and free from missing, loose, cracked or broken glass that is likely to injure a person, allows the elements or vermin to enter the structure, allows air escape or infiltration, or otherwise diminishes the thermal efficiency of the structure.

(g) *Windows.* Windows shall be maintained in sound condition. Exterior windows shall fit the window openings and shall be properly sealed or weatherstripped in a manner that prevents the entrance of the elements or vermin or excessive air escape or infiltration. The fit of exterior windows shall not otherwise diminish the thermal efficiency of the structure.

(h) *Exterior doors.* Exterior doors leading into rental housing units shall fit the door openings and shall also be weatherstripped in a manner that prevents the entrance of the elements or vermin or excessive air escape or infiltration. The fit of exterior doors shall not otherwise diminish the thermal efficiency of the structure. Exterior doors, GARAGE DOORS, door hardware and door frames shall be maintained in sound condition and capable of the use intended by their design. Any hollow core or solid core doors leading into rental housing units which are replaced after the effective date of this code, shall be replaced with solid core or metal wrapped doors that have a sound transmission rating at least equal to the rating of the door being replaced.

(i) *Interior doors.* Interior doors, door hardware and door frames shall be maintained in sound condition free from holes, breaks or cracks and capable of the use intended by their design. They shall also be capable of affording privacy to the occupants.

Section 7. That Section 21-37 of the Tempe City Code is hereby amended to read as follows:

Sec. 21-37. Safety and security.

(a) *General provision.* Every rental housing unit should have security devices which restrict unlawful entry, smoke detectors to provide fire safety and should be maintained free from hazards to the health, safety or welfare of the occupants.

(b) *Stairway; tripping hazard.* Every inside and outside stairway shall be maintained in sound condition and free from any broken, rotted or missing steps or tripping hazards.

(c) *Stairway; handrail.* Every inside and outside stairway which contains four (4) or more risers shall be provided with a handrail in sound condition securely fastened to a wall or balusters.

(d) *Stairway; guardrail and enclosures.* Every stairway which exceeds thirty (30) inches in height shall be protected by a guardrail and enclosure material in sound condition. The openings in the enclosure material shall be of a size to prohibit a spherical object seven (7) inches in diameter from passing through or under.

(e) *Balcony and porch; guardrail and enclosures.* Every balcony or porch higher than thirty (30) inches above the ground shall be protected by a guardrail and enclosure material in sound condition. The openings in the enclosure material shall be of a size to prohibit a spherical object seven (7) inches in diameter from passing through or under.

(f) *Locking devices; exterior doors.* Exterior doors leading into rental housing units or tenant storage rooms, which are reasonably accessible, shall have a locking device properly installed and in sound condition capable of the use intended by its design. Specific requirements are as follows:

- (1) Swinging exterior doors leading into rental housing units shall have dead bolt locks with a minimum one inch throw; and
- (2) Sliding doors shall be provided with a locking device or devices which prevent lifting or sliding of the locked door from the exterior of the unit.

(g) *Door viewers.* Every principal entrance door shall be equipped with at least a one hundred sixty degree (160°) eyeviewer. Principal entrance doors which contain a window or have an adjacent window which allows a view of the area directly in front of the door, shall not require an eyeviewer.

(h) *Locking devices; windows.* Every openable window reasonably accessible from the outside shall have a locking device or devices properly installed and in sound condition capable of the use intended by its design. Such devices shall prevent opening, lifting or sliding of the locked window from the exterior of the unit.

(i) *Smoke detectors.* Smoke detectors shall be installed in all existing rental housing units. The installation of smoke detectors shall ~~at least meet the requirements specified in subsection 1210(a) of the 1988 Uniform Building Code~~ MEET THE REQUIREMENTS OF THE CURRENTLY ADOPTED BUILDING CODE. The owner shall be responsible for the installation, replacing the battery annually (if battery operated) and maintaining appropriate records of required smoke detectors. Upon termination of a tenancy in any rental housing unit, the owner, owner's agent or manager shall insure that any required smoke detectors are operational prior to reoccupancy of the unit.

Section 8. That Section 21-42 of the Tempe City Code is hereby amended to read as follows:

Sec. 21-42. Remedies and penalties.

(a) *Cumulative remedies.* The remedies herein are cumulative when there are separate violations and the city may proceed under one or more of such remedies when there is more than one violation. Remedies and penalties will be pursued by the city in conformance with the rules and regulations adopted pursuant to this chapter.

(b) *Civil sanction.* Any person who causes, permits, facilitates or aids or abets any violation of any provision of this chapter or who fails to perform any act or duty required by this chapter is subject to a civil sanction ~~of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) but~~ AS ENUMERATED IN THE FINE SCHEDULE ADOPTED BY THE CITY COUNCIL. IN NO CIRCUMSTANCES SHALL THE FINE BE LESS THAN THE CURRENT FINE SCHEDULE AND total fines shall not exceed two thousand dollars (\$2,000) per day for each property. In addition to the amount of the fine imposed, there is imposed a default penalty in the amount of fifty dollars (\$50) should the defendant fail to appear and answer for a violation of this chapter within the time period stated on the citation or fails to appear at the time and place set by the court for a matter arising under this chapter.

(c) *Criminal misdemeanor.* Notwithstanding the provisions of subsection (b) above, any person who causes, permits, facilitates or aids or abets any violation of any provision of this chapter or who fails to perform any act or duty required by this chapter is guilty of a class 1 misdemeanor. The city prosecutor is authorized to file a criminal misdemeanor complaint in the Tempe Municipal Court for violation of this chapter. The rental agent or property manager may avoid criminal liability by forwarding a copy of the notice to comply to the owner if it is sent by certified mail/return receipt requested within two (2) days of receiving the notice to comply.

(d) *Separate offenses.* Each day any violation of any provision of this chapter or the failure to perform any act or duty required by this chapter exists, shall constitute a separate violation or offense.

(e) *Property owner.* For the purpose of enforcement of this chapter, the owner of record, as recorded by the Maricopa County Recorder's office, of the property upon which the violation exists, shall be presumed to be a person having lawful control over the property. If more than one person shall be recorded as the owner of the property, said persons shall be jointly and severally presumed to be persons having lawful control over the property. This presumption shall not prevent enforcement of the provisions of article II against any person specified in subsection (b) or (c) of this section.

(f) *Abatement.* In addition to any other sanction or penalty authorized under subsection (b) or (c) of this section, the designated hearing officer may issue an order directing the owner, occupant, rental agent, property manager or responsible person to abate the violation or authorize the city to abate the condition giving rise to the violation. The costs of such abatement shall be the responsibility of the owner of the property where the violation occurred and may be collected as a lien against the property found to be in violation.

Section 9. That Section 21-43 of the Tempe City Code is hereby amended to read as follows:

Sec. 21-43. Notice to comply.

(a) *Notification.* If the city finds a violation of this chapter, in the first instance, in any given twelve (12) month period, the city shall notify the responsible person through the issuance of a notice to comply.

(b) *Contents of notification.* A notice to comply issued pursuant to this code shall include:

- (1) Identification of the property in violation;
- (2) Statement of violation in sufficient detail to allow the owner, occupant, rental agent, property manager or responsible person to identify and correct the problem;
- (3) Compliance date which shall be a reasonable time period as determined by the inspector or adopted by resolution of the city council.—~~With respect to violations of article II of this chapter, the time period for compliance shall be not less than ten (10) days for minor defects and not less than two (2) days for running water, gas or electrical service, and reasonable amounts of hot water or heat, air conditioning or cooling, or essential services;~~
- (4) Name and phone number of the inspector;
- (5) Criminal and civil penalties for failing to correct the violation; and
- (6) City authority to abate the violation should the owner neglect, fail or refuse to correct the violation within thirty (30) days and to assess a lien against the property for the cost of abatement.

(c) *Service of notice.* The notice to comply may be served and shall be deemed proper and complete by any of the following methods:

- (1) Delivered in person to the owner, occupant, manager or agent of the premises where the violation has occurred, or to the person responsible for the violation;
- (2) Posted on or about the entrance of the premises where the violation occurred;
- (3) By first class mail, postage prepaid, addressed to the owner, occupant, agent, manager or responsible person at the last known address. Service by mail is deemed complete upon deposit in the U.S. mail.

- (4) Serving the owner, occupant, agent, manager or responsible person in the same manner as provided by the Arizona Rules of Civil Procedure.

(d) *Additional notice; notice not required.* Nothing herein shall preclude the city from giving additional verbal or written notice at its discretion but it is not obligated to notify the same person as to a second (or additional) violation which has been the subject of a notice to comply within the previous twelve (12) month period. If the city does elect to give any additional notice in any instance, it shall not thereby become obligated to give such additional notice thereafter in the same or other situations. Nothing in this section shall require the issuance of a second notice to comply within twelve (12) months prior to commencement of civil or criminal violation proceedings.

~~(e) *Appeals of notices to comply.* Persons who have been issued a notice to comply for violations of article II of this chapter shall have a right to appeal the notice in the manner described below:~~

- ~~(1) *Hearing officer procedure.* Timely appeals of notices to comply for violations of article II of this chapter may be filed in writing with the designated hearing officer setting forth the specific claim for relief sought by the appealing party as well as the basis for the request. A fee as set by resolution of city council shall be paid at the time of filing and a hearing will be held within thirty (30) days. (See Appendix). The designated hearing officer may grant a modification of these standards when the literal interpretation of article II would cause an unusual or unreasonable hardship for the violator provided that such modification conforms with the intent and purpose of this code and such modification does not lessen any health or safety standards or any degree of structural, electrical, mechanical or plumbing integrity. A granted modification of article II shall not be considered as an alteration or amendment of any other ordinance, code or requirement.~~
- ~~(2) *Appeals review board procedure.* The board of adjustment sitting as the appeals review board shall hear appeals from the decision of the hearing officer that are filed in writing within fifteen (15) days of the hearing officer decision. The appeal will set forth the specific claim for relief which is sought by the appealing party as well as the basis for the request. A fee as set by resolution of city council shall be paid at the time of filing. (See Appendix). These appeals will not be subject to the property posting and newspaper publication requirements for board of adjustment matters but will be subject to the public meeting requirements. The board will hear all appeals within forty five (45) days or within such time as agreed to by the parties and the board.~~
- ~~(3) *Superior court procedure.* Once the decision of the appeals review board has been rendered, a party may apply to the Superior Court for relief in accordance with the Arizona Rules of Procedure for Special Actions. In the absence of a court order, the filing of a special action will not stay enforcement.~~

(E) *NOTIFICATION – HABITUAL OFFENDER.* COMPLAINTS ON PROPERTIES OWNED BY HABITUAL OFFENDERS WILL PROCEED THROUGH AN EXPEDITED PROCESS. THE EXPEDITED PROCESS APPLIES TO ANY PERSON WHO MEETS THE DEFINITION OF HABITUAL OFFENDER, WHETHER OR NOT THE PERSON HAS BEEN CONVICTED UNDER § 21-4(B). HABITUAL OFFENDERS ARE NOT ENTITLED TO A TIME PERIOD TO CURE INFRACTIONS OR OTHER WRITTEN OR FORMAL NOTICE OF VIOLATIONS. UPON DISCOVERING THAT A PROPERTY IS OWNED BY A HABITUAL OFFENDER, THE CODE INSPECTOR MAY:

- (1) INITIATE COURT OR ABATEMENT ACTION WITHOUT PROVIDING WRITTEN OR FORMAL NOTICE TO THE RESPONSIBLE PARTY;
- (2) ISSUE A FORMAL NOTICE OF VIOLATION OR CIVIL INFRACTION CITATION, INCLUDING NOTIFICATION THAT THE RESPONSIBLE PARTY HAS BEEN DEEMED A HABITUAL OFFENDER; OR
- (3) INITIATE ABATEMENT ACTION OR CRIMINAL PROCEEDINGS AGAINST THE RESPONSIBLE PARTY.

Section 10. That Section 21-53 of the Tempe City Code is hereby amended to read as follows:

Sec. 21-53. Abatement.

(a) *Hearing Officer authorized.* When a person is served with a notice to abate in accordance with A.R.S. § 9-499 to comply with the provisions of this code concerning matters within the scope of A.R.S. § 9-499 and neglects, fails or refuses to abate a violation for more than thirty (30) days from the effective date of the notice, the designated hearing officer shall hold an administrative hearing pursuant to the notice regarding whether an order should be entered authorizing the community development manager or designee to abate any condition that constitutes a violation. The hearing officer, after the hearing (or time for hearing should the person fail to appear) shall enter such rulings and orders which it determines to be appropriate including an order authorizing the city to abate the condition, INCLUDING THE AUTHORIZATION OF MULTIPLE ABATEMENTS FOR A PERIOD NOT TO EXCEED ONE HUNDRED EIGHTY (180) DAYS FROM THE PREVIOUS ABATEMENT ORDER.

(b) *Appeals.* Any person aggrieved by a decision of the designated hearing officer may appeal to the ~~superior court in accordance with the Rules of Procedure for Special Actions~~ CITY OF TEMPE'S BOARD OF ADJUSTMENT.

(c) *Statement of abatement expenses.* The community development manager or designee, when so directed by the designated hearing officer to abate a violation of this code, shall prepare a verified statement and account of all expenses incurred by the city and file such verified statement and account with the designated hearing officer. The verified statement and account shall include the actual cost of such removal or abatement together with an

administration charge as set by the city council by motion or resolution (Appendix A) with the cost of recording liens and releases thereof.

(d) *Collection of abatement expenses.* The person against whom the abatement order is issued shall have 15 days from the date of delivery or mailing of the statement of abatement expenses to pay. If the person fails to pay within the specified time period, the city manager or his designee shall prepare a duplicate copy of the statement and account as a notice of lien and record one copy with the office of the Maricopa County Recorder and within ten (10) days thereafter serve the remaining copy of such notice of lien upon the owner of the property liened in accordance with A.R.S. § 9-499. The recorded lien shall bear interest at the legal rate for judgments in the State of Arizona from the date that the lien was recorded until it is paid in full. The lien may be paid as provided in A.R.S. § 9-499(E).

(e) *Exemption.* The provisions of this section shall not apply to violations of article I, § 21-4 of this chapter.

Section 11. Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2007.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney