

Chapter 21

NUISANCES AND PROPERTY ENHANCEMENT

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ARTICLE I. NUISANCES**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.

(Ord. No. 99.35, 9-30-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

Sec. 21-2. Purpose and scope.

The purpose of this chapter is to promote the health, safety and welfare of Tempe and its residents, and to protect neighborhoods against physical, visual and economic deterioration. To that end, it is a violation of this article to erect, maintain, use, place, deposit, cause, allow, leave or permit to remain on any property any conditions that:

- (1) Contribute to or cause injury or endangerment to the health, safety or welfare of others;
- (2) Are contrary to community standards of decency;
- (3) Are offensive to the senses of any reasonable person of normal sensitiveness;
- (4) Unlawfully interfere with, obstruct or tend to obstruct or render dangerous the free passage or use, in the customary manner, of any stream, public park, parkway, square, sidewalk, street or highway in the city;
- (5) Obstruct the free use of property so as to essentially interfere with the comfortable enjoyment of life and property by the public; or

(6) Damage or contribute to the deterioration of property or improvements in the community.
(Ord. No. 99.35, 9-30-99; Ord. No. 2002.06, 5-30-02)

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;
 - c. Be no greater than thirty-five percent (35%) of the front and side areas visible from the street;
 - 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
 - e. Be maintained free of all vegetation, including, but not limited to grasses, trees and bushes.

Zoning and Development Code reference—Section 4-602(B)(7), recreational vehicle parking.

- (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 a 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 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;

Zoning and Development Code reference—Part 4, Chapter 8, Lighting

- (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;
- (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.

(Ord. No. 99.35, 9-30-99; Ord. No. 2002.06, 5-30-02; Ord. No. 2004.42, 1-20-05; Ord. No. 2006.53, 7-20-06; Ord. No. 2007.80, 12-13-07)

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;
 - 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

Cross Reference—Number assignment; placement on buildings, § 25-41.

- (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.

(Ord. No. 99.35, 9-30-99; Ord. No. 99.44, 12-16-99; Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

Sec. 21-5. Violations not exclusive.

Violations of this article are in addition to any other violation enumerated within this chapter or other code provisions and in no way limits the penalties, actions or abatement procedures that may be taken by the city for any violation of this article that is also a violation of any other ordinance of the city, or statute of the State of Arizona.

(Ord. No. 99.35, 9-30-99; Ord. No. 2002.06, 5-30-02)

Sec. 21-6. Repealed.

(Ord. No. 99.35, 9-30-99; Ord. No. 2000.13, 3-30-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02)

Sec. 21-7. Repealed.

(Ord. No. 99.35, 9-30-99; Ord. No. 2000.13, 3-30-00; Ord. No. 2002.06, 5-30-02)

Sec. 21-8. Repealed.

(Ord. No. 99.35, 9-30-99; Ord. No. 2000.13, 3-30-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02)

Sec. 21-9. Repealed.

(Ord. No. 99.35, 9-30-99; Ord. No. 2002.06, 5-30-02)

Sec. 21-10. Repealed.

(Ord. No. 99.35, 9-30-99; Ord. No. 2000.13, 3-30-00; Ord. No. 2002.06, 5-30-02)

Sec. 21-11. Repealed.

(Ord. No. 99.35, 9-30-99; Ord. No. 2002.06, 5-30-02)

Sec. 21-12. Repealed.

(Ord. No. 99.35, 9-30-99; Ord. No. 2002.06, 5-30-02)

Sec. 21-13. Unenumerated violations.

Notwithstanding any other provisions of this article, a person who commits a nuisance or willfully omits to perform any legal duty relating to the removal of a nuisance not enumerated in § 21-3 or § 21-4, but otherwise provided for within the scope of authority to regulate nuisances as granted to the city by state law, shall nonetheless be in violation of this chapter, provided the following conditions are satisfied:

- (1) The violation must meet any or all of the standards contained in § 21-2 of this article;
- (2) The community development manager or designee must submit a report of the violation to the city prosecutor for review. The report shall contain a detailed description of the violation and explain why the violation does not come within § 21-3 or § 21-4; and
- (3) The city prosecutor may commence, or cause the community development manager or designee to commence, an action under this section in any manner described in article III of this chapter.

(Ord. No. 99.35, 9-30-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05)

Sec. 21-14. Repealed.

(Ord. No. 99.35, 9-30-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02)

Sec. 21-15. Repealed.

(Ord. No. 99.35, 9-30-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02)

Sec. 21-16. Repealed.

(Ord. No. 99.35, 9-30-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02)

Sec. 21-17. Repealed.

(Ord. No. 99.35, 9-30-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02)

Secs. 21-18—21-20. Reserved.

[\[2\]](#)

ARTICLE II. RENTAL HOUSING CODE

DIVISION 1. GENERALLY

Sec. 21-21. Title.

This article shall be known as the Rental Housing Code, may be cited as such, and will be referred to hereafter as the "Code".

(Ord. No. 2002.06, 5-30-02)

Sec. 21-22. Scope.

This code shall apply to all rental housing units located within the city including mobile homes, single family homes and multifamily units. The intent of this code is to establish base standards for rental housing in Tempe so as to prevent or correct slum and blighted conditions and protect the health, safety and welfare of the community.

(Ord. No. 2002.06, 5-30-02)

Sec. 21-23. 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:

Accessory use areas means those areas and buildings around a rental dwelling which provide space for amenities and facilities, including but not limited to pay phones, picnic areas, recreation areas, laundry rooms, recreation rooms and refuse collection facilities.

Agent means a person residing or located within Maricopa County authorized by the owner of a rental housing unit to make or order repairs or service to the unit and authorized to receive notices on behalf of the owner.

Approved means in conformance with the appropriate codes and approved by the community development manager for the City of Tempe or his designee.

Architectural pool means a constructed or excavated exterior area designed to contain a regular supply of water other than a swimming pool or a spa.

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.

Dwelling means an enclosed occupied or unoccupied space designed as or being used as permanent living facilities, including single family and multifamily dwellings and accessory use areas.

Exterior opening means an open or closed window, door or passage between interior and exterior spaces.

Gang boxes means a group of postal service mail boxes clustered together serving a residential area.

Glazed means fitted with glass.

Habitable room means a room or enclosed floor space within a rental housing unit used, intended to be used or designed to be used for living, sleeping, eating or cooking and excludes bathrooms, laundry rooms, halls, closets and storage places.

Impervious means incapable of being penetrated or affected by water or moisture.

Infestation means the presence or apparent presence of insects, rodents, vermin or noxious pest of a kind or in a quantity that endangers health within or around a dwelling or may cause structural damage to the dwelling.

Inoperable vehicle means a vehicle which is physically incapable of operation, stripped, substantially damaged, discarded or unable to be safely operated.

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.

Makeshift means not in accordance with the requirements of this code, any ordinance of the city or rules or regulations adopted thereunder, accepted practices, prevailing standards, design of a licensed contractor or manufacturers recommendation.

Manager means any person who has charge, care or control of a rental housing unit.

Occupant means any person living in, sleeping in or possessing a rental housing unit.

Owner means a person, persons or legal entity listed as the current titleholder of real property, as recorded in the official records of the Maricopa County Recorder's Office.

Parking area means any area adjacent to a rental housing unit which was designed for or is used for the purpose of parking vehicles.

Rental housing unit means that portion of a dwelling for which payment or other consideration is being made to an owner, agent or manager for the use or occupancy of that portion as an independent living facility, excluding transient occupancy such as hotels and motels.

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.

Sound condition means free from decay or defects and in good working condition if applicable.

Specific lighting means artificial illumination which was designed and installed to provide adequate lighting for a specific area.

Storage means placing or leaving personal property in a location for a period of time exceeding thirty (30) days or for the purpose of preservation, seasonal or future use or disposal.

Vehicle means an automobile, truck, trailer, camper, recreational vehicle, boat or motorcycle.
(Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05)

Sec. 21-24. Authority to inspect.

(a) *Personnel.* The community development manager or designee is authorized to make reasonable and necessary inspections of rental housing units and premises to determine compliance with this article.

(b) *Access.* Every owner, agent, manager or tenant of a rental housing unit shall, upon reasonable notice, allow access to any part of such rental housing unit at all reasonable times for the purpose of making such inspections. If the owner, agent, manager or tenant refuses access to make an inspection, the city is authorized to obtain an inspection warrant in accordance with the provisions of chapter 34 of this code.

(c) *Scope.* An inspector may expand the scope of an inspection to include other city code violations noted during the inspection.

(d) *Compliance.* If upon inspection, violations of interior or exterior standards exist, the owner, agent or manager will be required to correct all violations within a reasonable period of time as determined by the inspector. In the event the rental housing unit becomes unoccupied, future occupancy will be prohibited until all violations have been corrected and the unit has been reinspected by the city and deemed to be in compliance.

(Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05)

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 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.

(Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

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." (Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

Secs. 21-27—21-30. Reserved.

DIVISION 2. RENTAL HOUSING STANDARDS

Sec. 21-31. Sanitary facilities.

(a) *General provision.* Every rental housing unit should have sanitary facilities, adequate for personal cleanliness and the disposal of human waste, which are properly installed and maintained in sound condition, free from defects, leaks or obstructions and connected to a safe supply of potable water and an approved sewage system.

(b) *Flush toilet.* Every rental housing unit shall contain a room that is equipped with a flush toilet in sound condition and properly connected to an approved water and sewage system. Every flush toilet shall have:

- (1) An integral water-seal trap that eliminates the passage of sewage gases into the room; and
- (2) Smooth, impervious, easily cleanable surfaces free from cracks or breaks and makeshift repairs that leak or are likely to cause injury to someone and shall be equipped with seats and flush tank covers constructed of smooth impervious materials free of cracks or breaks that leak or are likely to injure a person.

(c) *Lavatory basins.* Every rental housing unit shall contain a fixed lavatory basin in sound condition and properly connected to an approved hot and cold water system and a sewage system. The basin shall be in the same room as the toilet or as near to that room as practicable. If a rental housing unit contains a flush toilet in more than one room, it shall also contain a fixed lavatory basin in each room with a flush toilet or as near to each room as is practicable. Lavatory basin surfaces shall be smooth, easily cleanable, impervious and free from cracks or breaks that leak or are likely to cause injury to a person. Sinks used for kitchen purposes and bathtubs are not acceptable substitutes for lavatory basins.

(d) *Bathtub or shower.* Every rental housing unit shall contain a room that is equipped with a bathtub or shower in sound condition and properly connected to an approved hot and cold water system and a sewage system. Every bathtub shall have a smooth, impervious and easily cleanable inner surface, with a pitch sufficient to drain properly, free from makeshift repairs and free from cracks or breaks that leak or are likely to cause injury to a person. Every shower compartment or cabinet shall have a base with a leak-proof receptor that is made of impervious materials with a pitch sufficient to drain properly. The interior walls shall be made of a smooth, impervious, easily cleanable material free from cracks or breaks that leak or are likely to cause injury to a person. Built-in bathtubs with overhead showers shall have waterproof joints between the tub and the adjacent walls and the walls shall be made of impervious material free from cracks or breaks that leak or are likely to cause injury to a person.

(e) *Hot water service.* Every rental housing unit shall have hot water service properly installed and maintained in sound condition capable of furnishing reasonable amounts of hot water with a minimum temperature of one hundred ten degrees (110°). Water heating units shall be equipped with a temperature and pressure relief valve and a discharge line in accordance with the Tempe plumbing code.

(f) *Water-seal traps.* Bathroom plumbing fixtures, except those having integral traps, shall be separately trapped by a water-seal trap that will eliminate the passage of sewage gases into the room. The water-seal trap shall be located as near the outlet as possible.

(g) *Flow of water.* Bathroom plumbing fixtures shall have a reasonable flow of water and the minimum flow of hot or cold water issuing from a faucet or fixture shall be not less than one gallon per minute.

(Ord. No. 2002.06, 5-30-02)

Sec. 21-32. Food preparation facilities.

(a) *General provision.* Every rental housing unit should have a kitchen or kitchen area with suitable space and equipment to store, prepare and serve food in a sanitary manner. Adequate facilities for the disposal of food waste and refuse should also be provided.

(b) *Kitchen sink.* Every kitchen or kitchen area shall contain a fixed kitchen sink in sound condition, functioning properly and properly connected to an approved hot and cold water system and a sewage system. Each kitchen sink shall be of seamless construction and impervious to water and grease. The interior surfaces shall be smooth with rounded internal angles and corners, easily cleanable and free from cracks or breaks that leak or are likely to cause injury to a person. Lavatory basins and bathtubs are not acceptable substitutes for required kitchen sinks.

(c) *Water-seal traps.* Kitchen plumbing fixtures shall be separately trapped by a water-seal trap that will eliminate the passage of sewage gases into the kitchen. The water-seal traps shall be located as near the outlet as possible.

(d) *Flow of water.* Kitchen plumbing facilities shall have a reasonable flow of water and the minimum flow of hot or cold water issuing from a faucet or fixture shall be not less than one gallon per minute.

(e) *Oven and range or stove.* Every kitchen or kitchen area shall be equipped with a cooking oven and range or a stove properly connected and in sound condition. If the oven and range or stove is provided by the tenant per the rental agreement, the owner, agent or manager is exempt from the provisions of this section.

(f) *Refrigerator.* Every kitchen or kitchen area shall be equipped with a refrigerator properly connected and in sound condition. Refrigerators shall be capable of maintaining a temperature between forty degrees (40°) and forty-five degrees (45°) Fahrenheit. Refrigerators shall have some capacity for storing frozen food. If the refrigerator is provided by the tenant per the rental agreement, the owner, agent or manager is exempt from the provisions of this section.

(g) *Sanitary surfaces; preparation and storage areas.* Countertops, food preparation surfaces, food storage pantries and cupboards shall be easily cleanable and free from holes, breaks or cracks that can leak, are likely to cause injury to a person or could permit the harborage of insects and dampness that could promote the growth of bacteria.

(h) *Storage of garbage.* No owner, agent or manager of any rental housing unit shall permit upon his premises the exterior accumulation of any garbage or refuse, except in covered portable containers of rust-resistant metal, rubber, plastic or similar material.

(i) *Removal of garbage.* The owner, agent or manager of a rental housing unit shall provide for the removal of garbage and refuse by a properly licensed and authorized refuse hauler sufficient to maintain a clean and sanitary condition on the premises or shall require the tenant, lessee or occupant to provide such service from a properly licensed and authorized refuse hauler.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-33. Electrical and lighting.

(a) *General provision.* Every rental housing unit should have electrical service and lighting properly installed and maintained in sound condition adequate to support the health and safety of occupants, permit the safe use of electrical appliances and permit normal indoor activities.

(b) *Habitable rooms; outlets and lights.* Every habitable room shall contain at least two (2) electrical convenience outlets and either a permanently installed light fixture controlled by a wall switch or an additional electrical convenience outlet controlled by a wall switch. Ceiling or sidewall light fixtures controlled by a wall switch shall be required in all kitchens or kitchen areas. In addition to the above minimum requirements, every owner, agent and manager shall provide sufficient electrical outlets to service the appliances and fixtures furnished by the owner, agent or manager and located within the room.

(c) *Other rooms; outlets and lights.* Every laundry room, bathroom and toilet compartment shall contain at least one permanently installed ceiling or sidewall light fixture controlled by a wall switch. In addition to the above minimum requirements, every owner, agent and manager shall provide sufficient electrical convenience outlets to service the appliances and fixtures furnished by the owner, agent or manager and located within the room.

(d) *Ground-fault circuit-interrupters.* All electrical convenience outlets installed in bathrooms

and within six (6) feet of a lavatory or kitchen sink shall have ground-fault circuit-interrupter protection, provided it can be installed without additional wiring to the main electrical service panel. As used in this section, a bathroom is an area with a tub or shower, with or without a lavatory.

(e) *Stairway and hall lights; except public.* Every stairway and hall, except public or common stairways and halls, shall contain at least one ceiling or sidewall light fixture controlled by a wall switch except where light is available from a permanent source or an adjacent space. The switch or switches shall be located so as not to have to traverse darkened areas to access them.

(f) *Stairway and hall lights; public.* Every public or common stairway, hallway, corridor or breezeway in or leading into multifamily dwellings shall be lighted, by natural or artificial means, at all times.

(g) *Exterior entrances; multifamily.* Every building serving four (4) or more rental housing units shall have the main building entrances lighted with specific lighting during nighttime hours. The entrances into individual rental housing units shall also be provided with specific lighting which shall be controlled either automatically or manually by a switch controlled by the tenant.

(h) *Exterior areas; multifamily.* Every common area, accessory use area, aisle, passageway, pedestrian walkway and sidewalk of buildings serving four (4) or more rental housing units shall be lighted with specific lighting during nighttime hours.

(i) *Parking lots; multifamily.* Common parking lots and covered and uncovered parking areas serving four (4) or more rental housing units shall be lighted with specific lighting during nighttime hours.

(j) *Mailboxes; multifamily.* Postal service "gang boxes" in buildings serving four (4) or more rental housing units shall be lighted with specific lighting during nighttime hours.

(k) *Installation and maintenance.* Every outlet, switch and fixture shall be properly installed and maintained in sound condition. No owner, agent or manager shall provide, install or allow to be installed or used any frayed and exposed wiring; wiring unprotected by proper covering; fixtures in disrepair; tacked extension cording; or makeshift wiring, outlets or fixture repairs.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-34. Thermal environment.

(a) *General provision.* Every rental housing unit should contain safe heating and cooling facilities which are properly installed and maintained in sound condition and capable of providing adequate heating and cooling, appropriate for the climate, to assure a comfortable and healthy living environment.

(b) *Heating requirements.* Every rental housing unit shall have heating, under the tenant's control, capable of safely heating all habitable rooms, bathrooms and flush toilet rooms located therein to a temperature of at least seventy degrees (70°) Fahrenheit at a distance three (3) feet above floor level in the center of the room. Required heating shall be provided by permanently installed heating facilities.

(c) *Cooling requirements.* Every rental housing unit shall have cooling, under the tenant's control, capable of safely cooling all habitable rooms, bathrooms and flush toilet rooms located therein to a temperature no greater than eighty-eight degrees (88°) Fahrenheit, if cooled by evaporative cooling, or eighty-two degrees (82°) Fahrenheit, if cooled by air conditioning. Temperature measurements shall be taken at a distance three (3) feet above floor level in the center of the room. Required cooling shall be provided by permanently installed cooling facilities. Except that those air conditioning facilities serving more than one rental housing unit shall only be required to be designed and operating in conformance with manufacturer's specifications.

(d) *Unvented combustion heaters; prohibited.* No owner, agent or manager shall provide, install or allow to be installed or used any unvented portable space heaters burning solid, liquid or gaseous fuels.

(e) *Cooking appliances as heaters; prohibited.* No owner, agent or manager shall allow the use of any ovens, stoves or ranges, or other cooking appliances for the purpose of heating any portion of a dwelling.

(Ord. No. 2002.06, 5-30-02)

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.

(Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

Sec. 21-36. Space and occupancy.

(a) *General provision.* Every rental housing unit should have sufficient access and space to allow for adequate living and sleeping conditions while providing for the occupant's health, safety, privacy and general welfare.

(b) *Floor area; rental housing unit.* Every rental housing unit shall have at least two hundred twenty (220) square feet of total room area and shall contain at least one common room having not less than one hundred twenty (120) square feet.

(c) *Floor area; habitable room.* Every habitable room, except a kitchen, shall have not less than

seventy (70) square feet of habitable room area and shall not be less than seven (7) feet in any dimension.

(d) *Occupancy load; sleeping room.* Every rental housing unit shall contain at least one bedroom or living/sleeping room of appropriate size for each two (2) persons. Every room occupied for sleeping purposes by one person shall contain at least seventy (70) square feet of habitable room area and every room occupied for sleeping purposes by two (2) people shall contain at least fifty (50) square feet of habitable room area for each person.

(e) *Occupancy load; rental housing unit.* Every rental housing unit shall provide at least two hundred twenty (220) square feet of floor area for the first two (2) occupants and one hundred (100) square feet of floor area for each additional occupant. The floor area is to be calculated on the basis of total dwelling unit area.

(f) *Bedroom access.* In any rental housing unit that has more than one bedroom, access to any bedroom shall not be through another bedroom or a bathroom.

(g) *Bathroom access.* In any rental housing unit, the occupants of each bedroom must have access to a bathroom without going through another bedroom.

(h) *Interior access.* In any rental housing unit, access to bedrooms and bathrooms shall be from within the unit.

(Ord. No. 2002.06, 5-30-02)

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 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.

(Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

Sec. 21-38. Maintenance.

(a) *General provision.* Every rental housing unit interior and exterior should be maintained in a condition which provides the occupants with protection from the elements, a safe and healthy living environment and housing free from deterioration or slum-like conditions.

(b) *Interior; holes, cracks or breaks.* Every floor, interior wall and ceiling, cabinet and all appurtenances thereto shall be kept in sound condition and free of holes, cracks or breaks that could injure a person, admit or harbor insects or rodents, admit dampness or restrict privacy. Every hole cut in floors, walls or ceilings for the passage of plumbing fixtures or pipes shall be sealed to prevent the passage of insects, rodents or vermin.

(c) *Interior; paint and plaster.* Every floor, interior wall and ceiling, cabinet and all appurtenances thereto shall be kept free of any loose, cracked, scaling, chipping or peeling paint or plaster. All interior painted surfaces shall be painted with paint which is lead free.

(d) *Floor coverings; tripping hazards.* Floor coverings that are torn or loose and located on a stairway or within three (3) feet of a stairway shall be removed or repaired to prevent tripping. Tears in excess of six (6) inches and tears or projections rising one-quarter ($\frac{1}{4}$) inch or more above the floor surface in any location present a tripping hazard and shall be repaired.

(e) *Floor coverings; deteriorated, unsafe, unsanitary.* Floor coverings such as carpeting, tile, linoleum and similar materials shall be repaired or replaced when the floor covering is severely deteriorated or when the condition of the floor covering creates an unsafe or unsanitary environment.

(f) *Exterior; weather tight, watertight and vermin proof.* Every foundation, roof and exterior wall shall be reasonably weather tight, watertight and vermin proof and shall be kept in sound condition.

(g) *Exterior; deteriorated or slum-like.* All exposed exterior surfaces shall be maintained so as to be impervious to moisture and weather elements and every rental housing unit shall be free of broken, rotted, split or buckled exterior wall coverings or roof coverings. All exposed exterior surfaces shall not otherwise present a deteriorated or slum-like appearance and will meet the specific requirements which follow:

- (1) All exterior wood surfaces shall be protected from the elements and from deterioration by paint or other protective treatment; except such wood surfaces composed of wood that is naturally resistant to decay;
- (2) All exterior painted surfaces shall be painted with paint that is lead free and shall be free of loose, cracked, scaling, chipping or peeling paint in such amounts as to present a deteriorated or slum-like appearance;
- (3) Roof coverings shall be watertight and weather tight and shall be free of broken, rotted, split, curled or missing roofing material in such amounts as to present a deteriorated or slum-like appearance. All roofing materials shall meet the requirements of the Tempe building code; and
- (4) Replacement materials and paint used to repair or repaint exterior surfaces of a rental housing unit shall be visually compatible with the remainder of the materials and paint on the exterior of the unit.

(h) *Landscaping.* Every rental housing unit shall have landscaping in all yard areas which are visible from a public street, alley or sidewalk or a neighboring property. Such landscaping shall be installed and maintained so as to enhance the appearance and value of the property on which it is located and shall not present a deteriorated or slum-like appearance.

(i) *Exterior areas; tripping hazards.* Every common area, sidewalk, driveway, parking lot and parking area of rental housing units shall be free from holes, depressions or projections that are likely to cause tripping or injury to a person or otherwise present a hazard.

(j) *Inoperable vehicles; common parking areas.* Common parking lots and parking areas, serving more than one rental housing unit, shall be maintained free from the storage of abandoned, wrecked, dismantled, unregistered or inoperable vehicles.

(k) *Inoperable vehicles; other areas.* Parking areas serving only one rental housing unit, shall be maintained free from the storage of wrecked, dismantled or inoperable vehicles when such vehicles can be seen from a public street or sidewalk or a neighboring property. It is an affirmative defense to a violation of this subsection based on a wrecked, dismantled or inoperable vehicle, that the vehicle was titled to a resident of the property, that the vehicle was undergoing repair, and that the wrecked, dismantled or inoperable vehicle was repaired and any evidence of the repairs was removed within fourteen (14) days after the repair was begun.

(l) *Swimming pools; maintenance.* All swimming pools, architectural pools and spas shall be properly maintained so as not to create a safety hazard, harbor insect infestation or create a deteriorated or slum-like appearance.

(m) *Stagnant water.* All premises shall be maintained so as to prevent the accumulation of stagnant water when such water causes a hazardous or unhealthy condition, becomes a breeding area for insects or causes damage to foundation walls.

(n) *Infestation.* Every rental housing unit and premises shall be kept free from insect, rodent or vermin infestation. Every rental housing unit and premises shall be free from the presence or apparent evidence of insect or rodent infestation, other noxious pests, nesting places and any other unsightly or unsanitary accumulation which could harbor insects, rodents or other vermin.

(o) *Maintenance of facility and equipment.* Every supplied facility, piece of equipment or utility shall be so constructed, installed and maintained that it will function safely and effectively and remain in sound condition.

(p) *Discontinuation of services.* No owner, agent or manager shall cause any services, facilities, equipment or utilities which are required under this code to be removed from, shut off or discontinued in any occupied rental housing unit except for such temporary interruption as may be necessary while actual repairs or alterations are in process.

(q) *Responsibility for maintenance.* It shall be the responsibility of the owner, agent and manager to provide for the interior and exterior maintenance of the rental housing unit and premises. (Ord. No. 2002.06, 5-30-02)

Secs. 21-39—21-40. Reserved.

ARTICLE III. ADMINISTRATION AND ENFORCEMENT

Sec. 21-41. Commencement of action.

(a) The community development department is assigned the primary responsibility of enforcing this chapter and is granted the authority expressly and impliedly needed and necessary for enforcement.

(b) Nothing in this section shall preclude employees of the community development department from seeking voluntary compliance with the provisions of this chapter or from enforcing this chapter, proactively or reactively, through warnings, notices to comply, or other such devices designed to achieve compliance in the most efficient and effective manner under the circumstances.

(c) The community development department is authorized to recommend reasonable and necessary rules and regulations to carry out the provisions of this article which shall be approved by resolution of the city council.

(Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05)

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 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.

(Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

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;
- (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) *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.

(Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

Sec. 21-44. Jurisdiction.

Unless otherwise specified, the Municipal Court of the City of Tempe shall have jurisdiction of all proceedings to enforce this chapter.

(Ord. No. 2002.06, 5-30-02)

Sec. 21-45. Transfer of property after notice.

(a) *Written assumption of responsibility.* The transfer of any or all property interest in any manner, including but not limited to, the sale, trade, lease, gift or assignment of any real property against which a notice to comply has been issued or allegations of violations have been filed with the court shall not relieve the parties unless the legal entity assuming interest in such property, in writing, assumes responsibility for compliance with the notice to comply or alleged violations and a copy of such writing is presented to the city.

(b) *Criminal violation.* Any legal entity, real or statutory, who transfers the ownership interest in real property, against which a notice to comply has been issued or allegations of violations have been filed with the court, shall be guilty of a class 1 misdemeanor unless they have obtained a written acceptance of responsibility for compliance with the notice or court action from the new owner.

(Ord. No. 2002.06, 5-30-02)

Sec. 21-46. Vacation of tenants; reoccupancy.

(a) *Comply even if vacated.* An owner, agent or manager served with a notice to comply or enforcement proceeding for violations of article II of this chapter shall not be relieved from responsibility to comply because the tenant(s) have vacated the rental housing unit.

(b) *Compliance before reoccupancy.* The owner, agent or manager of a rental housing unit shall not lease, rent or otherwise make available for occupancy by tenants any unit against which a notice to comply has been issued or an enforcement action has been instituted until the violations contained in the notice to comply or enforcement proceeding have been corrected.

(Ord. No. 2002.06, 5-30-02)

Sec. 21-47. Commencement of civil action.

(a) After issuing a notice to comply and if the violation(s) is not corrected within the designated time, the community development manager or designee is authorized to commence a civil action under this chapter by issuing a citation to the occupant of the property where the violation has occurred, the owner, agent or manager of record, or any person responsible for the violation.

(b) The citation form will be substantially in the same form as the Arizona traffic citation currently in use and shall direct the defendant to appear in Tempe Municipal Court or pay the fine imposed pursuant to this chapter within fourteen (14) days after issuance of the citation. The citation shall contain the date and location of the violation, reference to the city code provision violated, and notice that within fourteen (14) days from the date on which the citation was issued, the fine for the violation must be paid to and received by the Tempe Municipal Court or a request for a hearing be made to and received by the Tempe Municipal Court. The form shall also contain a schedule of fines and penalties that are imposed by this chapter. The fines and penalties schedule shall be adopted by resolution of the city council.

(c) *Service of citation.* The citation shall be served by delivering a copy to the defendant by any of the following means:

- (1) By service upon the defendant;
- (2) By posting the citation on the property where the violation has occurred or upon the property of the person responsible for the property where the violation has occurred;
- (3) By first class mail, postage prepaid, addressed to the defendant at the last known address. Service by mail is deemed complete upon deposit in the U.S. mail; or
- (4) By any of the methods described in Rules 4, 4.1 or 4.2, Arizona Rules of Civil Procedure.

(d) *Default.* The citation shall state that if the defendant fails to appear within the time specified, and either pay the fine for the violation or request a hearing, judgment by default will be entered in the amount of the fine designated on the citation for the violation charged plus a penalty amount as established by this chapter for the defendant's failure to appear.

(Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05)

Sec. 21-48. Appearance or payment by mail.

(a) The defendant shall, within fourteen (14) days of the issuance of the citation, appear in person or through his attorney in the Tempe Municipal Court, and shall either admit or deny the allegations contained in the citation, or defendant may proceed as provided in subsection (b) below. If the defendant admits the allegations, the court shall immediately enter judgment against the defendant in the amount of the fine for the violation charged as set by this chapter. If the defendant denies the allegations contained in the citation, the court shall set a date for a hearing on the matter.

(b) The defendant may admit the allegation in the citation and pay the fine indicated by mailing the citation together with a check for the amount of the fine to and made payable to the Tempe Municipal Court. Appearance by mail will be deemed complete by the postmarked date on the mailing.

(c) Any defendant who appears in the Tempe Municipal Court and denies the allegations as provided in subsection (a) above shall be deemed to have waived any objection to service of the citation, unless such objection is affirmatively raised by the defendant at the time of the first appearance in relation to the citation.

(Ord. No. 2002.06, 5-30-02)

Sec. 21-49. Default judgment.

If the defendant fails to appear as directed on the citation, the court, upon request of the community development manager or designee, shall enter a default judgment for the amount of the fine indicated for the violation charged, together with a penalty for the defendant's failure to appear as established by this chapter. If a defendant fails to appear at a hearing, the court may enter judgment against the nonappearing defendant for the amount of the fine plus a penalty for failure to appear as established by this chapter. No judgment may be entered against a fictitiously identified defendant, unless the citation is amended to reflect the true identity of the defendant who received the citation.

(Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05)

Sec. 21-50. Rules of procedure for civil citations.

The Arizona Rules of Procedure in Civil Traffic Violation Cases may be followed by the Tempe Municipal Court for civil citations issued pursuant to this code except as modified or where inconsistent with the provisions for this code or as modified or established for use by the Arizona Supreme Court for the Tempe Municipal Court.

(Ord. No. 2002.06, 5-30-02)

Sec. 21-51. Collection of civil sanction, reinspection fees.

(a) The court may enforce collection of delinquent fines, fees and penalties as may be provided by law. In addition, any judgment for a civil sanction imposed pursuant to this code shall constitute a lien against the real property of the owner of the rental housing unit where the violation occurred. The lien may be perfected by recording a copy of the judgment under seal of the City of Tempe with the Maricopa County Recorder. Any judgment for civil sanction pursuant to this code may be collected as any other civil judgment.

(b) Any person who neglects, fails or refuses to correct the violations contained within a notice to comply or other similar device issued pursuant to this chapter may be assessed a reinspection fee for inspections which occur after the compliance date. The fee for these reinspections shall be set by resolution of the city council. Failure to pay reinspection fees within fourteen (14) days of assessment is a violation of this section. Reinspection fees may be collected as a lien against the real property where

the violation occurred in accordance with § 21-53.

(Ord. No. 2002.06, 5-30-02)

Sec. 21-52. Interference with enforcement, abatement.

Any person who interferes with, prevents, or attempts to interfere with or prevent an individual employed by the city or other person contracted for by the city, from investigating an alleged violation of this chapter, or from correcting or abating a violation of this chapter is guilty of a Class 1 misdemeanor.

(Ord. No. 2002.06, 5-30-02)

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 city'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.

(Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05; Ord. No. 2007.80, 12-13-07)

Sec. 21-54. Conflict of ordinances.

In any case where a provision of this code is found to be in conflict with a provision of any zoning, building, fire, safety, or health ordinance or code of the city, existing on the effective date of this code, the provision which establishes the higher standard for the promotion and protection of the health and

safety of the community shall prevail.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-55. Recording a violation.

The city may record a notice of violation with the county recorder. A recorded notice of violation shall run with the land. Failure to record a notice of violation shall not affect the validity of the notice as to persons who receive the notice. When the property is brought into compliance, a satisfaction of notice of violation shall be filed at the request of the owner or responsible party at the requestor's expense.

(Ord. No. 2002.06, 5-30-02)

[1]

Editor's note—Ch. 21, Art. I, Nuisances, was rewritten and renumbered in its entirety (Ord. No. 99.35). Prior ordinances were Ord. No. 87.16, 4-20-87; Ord. No. 87.31, 7-23-87; Ord. No. 88.22, 4-14-88; Ord. No. 89.65, 1-11-90; Ord. No. 93.14, 5-13-93; Ord. No. 93.42, 1-13-94. Ch. 22, Art. III, Neighborhood enhancement and cleanup, §§ 22-60 through 22-70 were incorporated into Art. I.

[2]

Editor's note—Ch. 22, Art. VII, Rental housing code, §§ 22-110 through 22-170 were incorporated into this article. Prior ordinances were Ord. No. 98.01, 1-8-98 and Ord. No. 2001.17, 7-26-01.