Staff Summary Report

Tempe

Hearing Officer Hearing Date: August 5, 2008 Agenda Item Number: 7

SUBJECT: This is a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items at the BROWN RESIDENCE (PL080244/ABT08015) located at 1208 West Malibu Drive.

DOCUMENT NAME: 20080805dssd02 PLANNNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Hold a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the BROWN RESIDENCE (PL080244/ABT08015) (Kenton Brown, property owner) Complaint CE080124 located at 1208 West Malibu Drive in the R1-6, Single Family Residential District.

PREPARED BY: Shawn Daffara, Planner II (480-858-2284)

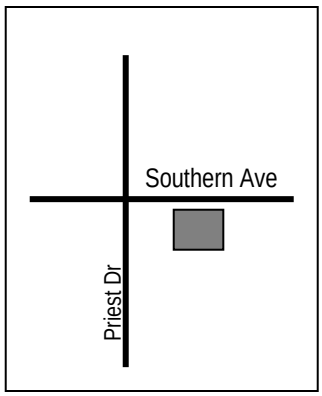
REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) SEA

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval

ADDITIONAL INFO: The Neighborhood Enhancement Division is requesting approval to authorize the abatement of the BROWN RESIDENCE (PL080244/ABT08015) (Kenton Brown, property owner) Complaint CE080124 located at 1208 West Malibu Drive in the R1-6, Single Family Residential District. The details of this case represent several months of correspondence for compliance with the property owner. Staff recommends authorizing abatement of this property.



PAGES:

1. List of Attachments
2. Comments; History & Facts/Description

ATTACHMENTS:

1. Location Map
2. Aerial Photo

3-12. Neighborhood Enhancement Report

13-18. Neighborhood Enhancement Photo's

COMMENTS:

The Neighborhood Enhancement Division is seeking approval of a request to authorize the abatement of the BROWN RESIDENCE (PL080244/ABT08015) (Kenton Brown, property owner) Complaint CE080124 located at 1208 West Malibu Drive in the R1-6, Single Family Residential District. The details of this case represent several months of correspondence for compliance with the property owner. Refer to the attached memo and photos from Jody Benson, Neighborhood Enhancement Inspector, for the history and facts on the enforcement of the property.

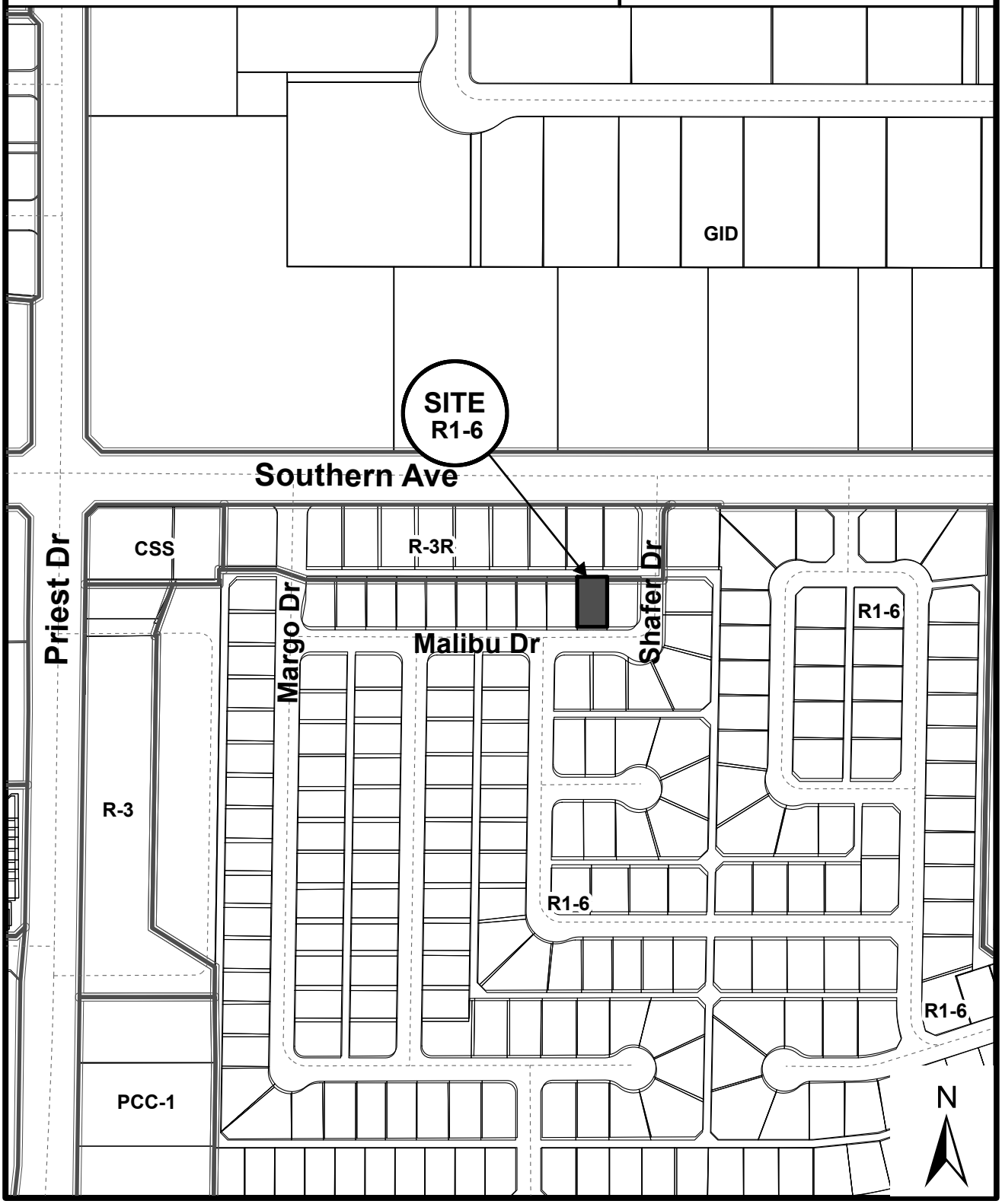
Staff recommends authorizing abatement of this property.

HISTORY & FACTS: See attached memo from the Neighborhood Enhancement Division.

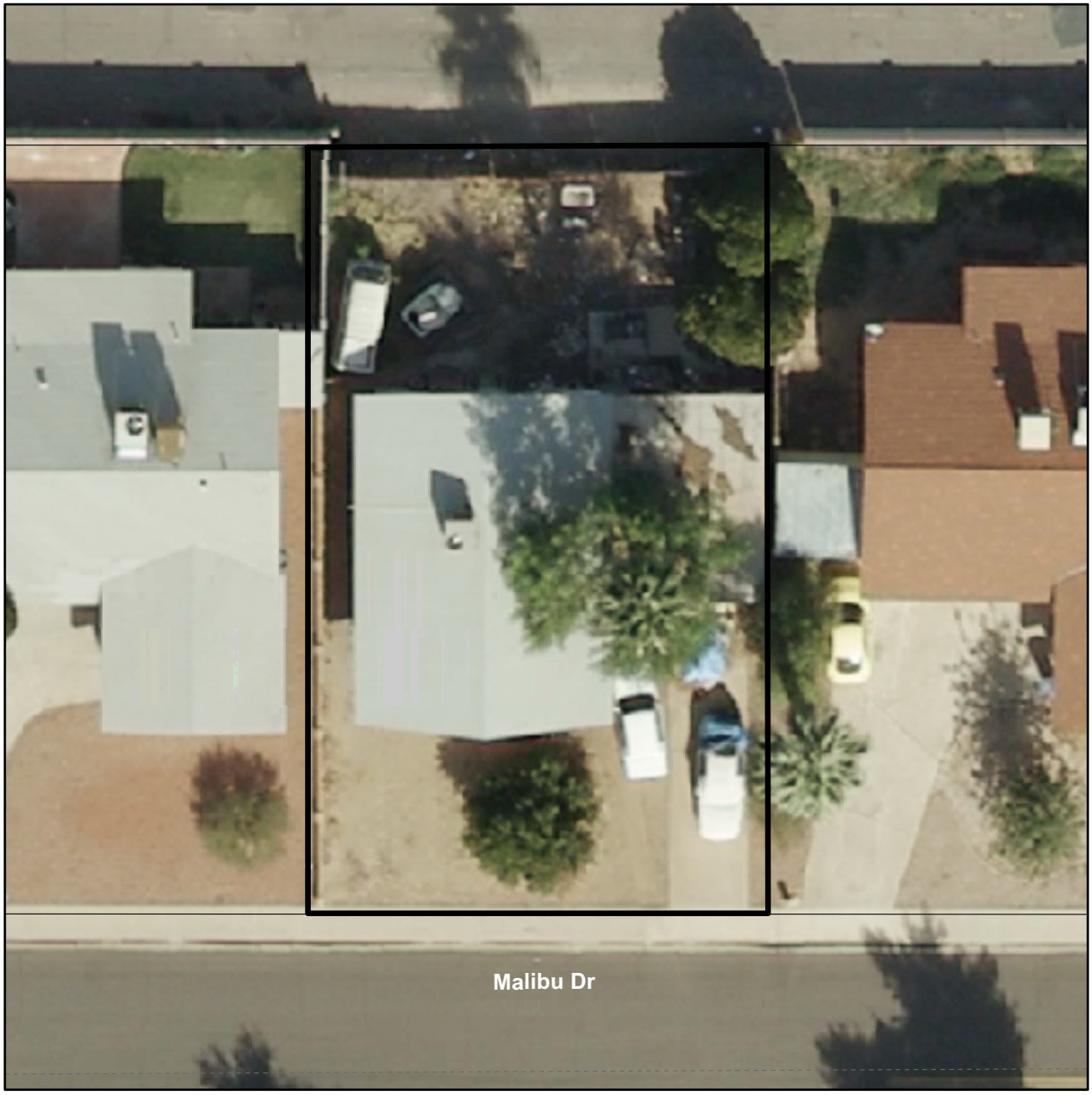
DESCRIPTION:
Owner – Kenton Brown
Applicant – Jody Benson, COT Neighborhood Enhancement
Existing zoning – R1-6, Single Family Residential District
Lot area – 5,985 s.f. / .14 acres
Building area – 1,250 s.f.
Year of structure – 1970

Tempe

BROWN RESIDENCE	PL080244



Location Map



BROWN RESIDENCE (PL080244)

DATE: 07/08/08

TO: Jan L. Koehn, Code Enforcement Administrator

FROM: Jody Benson, Code Inspector

SUBJECT: Request for Authorization to Abate Complaint CE080124

LOCATION: 1208 W. Malibu Drive, Tempe, AZ

LEGAL: Book of Maps 123, Page 24, Lot 10, as recorded with the Maricopa County Assessor

OWNER: Kenton Brown
1208 W. Malibu Drive
Tempe, AZ 85282

FINDINGS:

1/8/08 Case opened proactively by temporary Code Inspector Kristen Battafarano for deteriorated landscape, junk and debris and no house number (address) being placed upon the residence. Notice sent.

1/31/08 Property was re-inspected by Kristen Battafarano. Found oranges and debris gone with a few raked piles remaining, and house number posted. Dead branches also removed, but junk is still stored in driveway, and tires on vehicle appear flat.

02/01/08 Kristen Battafarano spoke with Kenton Brown on phone. He is disabled but working on getting in compliance. Home has leaky roof- is storing stuff outside. Kristen Battafarano recommended he put the items in stacked storage containers up against the house, or create a visual barrier to place the items behind, and gave him 30 days.

02/04/08 Kristen Battafarano received an e-mail from Kenton Brown saying tires were just low but are now filled, and has removed piles. Replied saying Kristen Battafarano will send him a letter to confirm re-inspection date for junk/debris.

02/23/08 Property was re-inspected by Kristen Battafarano. She noted that weeds had grown and the wind had knocked down more tree litter. Junk and debris is still visible on drive.

02/27/08 Kenton Brown called Kristen Battafarano requesting extension on 02/28/08 re-inspection. He said he gets home late, sometimes at dark, cannot work long because of his disability, but is working on getting things done. He asked what he needs to have done by next inspection, and

Kristen Battafarano recommended enclosing, containing, or covering the items on his driveway so they are not visible from the street. He said he cannot remove the weeds, but has spray and is going to spray them. Kenton Brown was granted an extension to 03/04/08.

03/04/08 Kenton Brown sent an e-mail requesting another extension. His disabilities are keeping him from completing the clean-up, and the herbicide has not worked. Kristen Battafarano replied, granting him to the 03/13/0.

03/5/08 A neighbor called about trailer with a broken down car and broken down car in the street and to complain about the back yard: overweight weeds, old car, and bomb equipment. Kristen Battafarano spoke to City of Tempe Code Inspector Jody Benson and City of Tempe Senior Code Inspector Mike Spencer about bomb equipment. Tempe Police were notified and found no evidence of bomb making materials.

. Kristen Battafarano received 2 messages from Kenton Brown that property is in compliance except for weeds. Kristen Battafarano left message for Kenton Brown that she will inspect on the 23rd or 14th.

03/14/08 Kristen Battafarano received message from Kenton Brown that weeds have been sprayed and are dying.

3/17/08 Kristen Battafarano inspected and found weeds/grass turning brown, but still present, and some visible junk and debris.

3/18/08 Kristen Battafarano spoke to Kenton Brown to tell him how she found the property. Told him more things in his front yard must be contained, covered or moved, and the weeds must be gone by re-inspection.

03/22/08 Kristen Battafarano called Kenton Brown to let him know she would be inspecting on the 26th. She gave him City of Tempe Code Inspector Jody Benson's info to call for any questions or concerns. Kristen Battafarano reiterated that anything on his carport must be removed, covered or contained.

04/01/08 Kristen Battafarano received a message from Kenton Brown to give an update. Re-inspected and found the junk and debris contained and covered. Dead, over height weeds remain in the front yard. Sent citation for weeds, and e-mailed him notification that Kristen Battafarano had done so and why.

04/11/08 Kristen Battafarano received 3 phone messages from Kenton Brown stating that the weeds were recent additions to the notices and he should not be cited for them, and that they are dead which should be enough. He does not have a camera to take photos to prove the violation was corrected if he goes to court and asked if Kristen Battafarano could take

photos. Left Kenton Brown a message on his work voicemail that the weeds have been in the notices since February, and that Kristen Battafarano did tell him 3/18 they would need to be removed by 3/26. Kristen Battafarano also stated she would be by the property on the date listed on his citation to take photos.

04/15/08 Kristen Battafarano received a complaint about deteriorated landscape in the backyard. She inspected property and took photos. Weeds in front have been removed. Found over height, dead weeds and grass, and car/car parts.

04/18/08 Continuance granted for hearing date on the citation now set for 5/22/08.

05/20/08 Court notification of date change sent via e-mail. New date is 06/17/08.

05/21/08 Kristen Battafarano took more photos of back yard. Found junk and debris and dry weeds and grass 3' high.

5/23/08 Kristen Battafarano prepared to write final notice for back yard with notification that back yard is a fire hazard, but had to confirm this with Tempe Fire Inspector. A call was to Tempe Fire Inspector(s), who will check and respond.

05/31/08 Kristen Battafarano received e-mail notification from Tempe Fire Inspector that the property is a fire hazard.

6/04/08 Kristen Battafarano received e-mail from Jan Koehn that I should send this case to Jody Benson for immediate abatement, however, the case is pending it's hearing in court, so awaiting the outcome of the court case was recommended.

06/13/08 Kristen Battafarano received phone message form Kenton Brown.

06/17/08 City of Tempe Code Inspector Jody Benson inspected property and found deteriorated landscape, junk and debris, and deteriorated fencing in the front and back yards. There is also a silver car covered by tattered and torn car cover, pieced together with a tarp. The vehicle has wreck damage and appears inoperable. There is also a trailer that appears to have a flat that has a large amount of junk and debris partially covered. He also took photographs for court.

Received notification that Kenton Brown asked for a new court date because of medical emergency. Rescheduled to July 7th. Kristen Battafarano Also received a message from Kenton Brown.

Forwarded case to Jody Benson.

06/19/08 Received an estimate of $1160 from Abatement Contractor Jack

Harrington for removal of all dead growth and over height grass and weeds, shoring up and repair of the deteriorated fencing, removal of all junk and debris in the front and back yard(s) and the removal of any and all inoperable/un-registered vehicle(s) located in the driveway. .

06/24/08 City of Tempe Code Inspector Jody Benson inspected property and found the cover was partially hanging off of the silver Monte Carlo in the driveway. The Monte Carlo has no tag. Photographs taken.

07/01/08 Sent and posted a thirty day Notice to Abate.

COMPLAINT HISTORY:

CE991826 06/16/99 thru 09/16/99 Complaint of junk and debris and deteriorated landscape in the front and back yards and an inoperable/un-registered van in the driveway. Lucy Morales was the code inspector.

CE993801 12/17/99 thru 04/25/06 Complaint for deteriorated landscape, junk and debris, deteriorated roofing, and unpainted wooden surfaces. Case was open for 5 years and 5 months. Multiple citations as well as criminal charges were filed against Kenton Brown. Kirk Erickson was the code inspector.

CE063279 08/07/06 thru 01/02/07 Complaint for junk and debris, deteriorated fencing, and inoperable/un-registered vehicles. Case took 5 months to resolve. Kirk Erickson was the inspector.

RECOMMENDATIONS:

Kenton Brown, owner of 1208 W. Malibu Drive, is violating Tempe City Code in regards to allowing deteriorated landscape, junk and debris, deteriorated fencing in the front and back yard(s) and also by allowing inoperable/unregistered vehicle to remain in the driveway. Prior case notes, as in this case, show a repeated pattern of misunderstanding, extensions, and continuances that have stalled all efforts to have Kenton Browns property in compliance in a reasonable timeframe. Attempts to allow the Kenton Brown to correct the violations have met with very little improvement in the past 6 months.

Without the intervention of abatement the property will continue to deteriorate. I therefore make a request to the City of Tempe Development Services Hearing Officer for authorization to abate this public nuisance in accordance with section 21-53 of the Tempe City Code and authorization of multiple abatements for a period not to exceed one hundred eighty (180) days from the previous abatement order.

Kenton Brown is the listed legal owner of the residence, as recorded by the Maricopa County Assessor's Office.

Respectfully submitted,
Jody Benson
City of Tempe Code Inspector

ACTION TAKEN: Referred for Abatement

NAME Jan Koehn

DATE: 7-8-08

CASE # **CE080124**

Tempe

NOTICE OF INTENT TO ABATE PUBLIC NUISANCE

DATE: 07/01/08

TO: Kenton Brown
1208 W. Malibu Drive
Tempe, AZ 85282

This serves as notification of the City of Tempe's intentions regarding the abatement of code violations on the following described property:

LEGAL: BOOK OF MAPS 123, PAGE 24, LOT 10, AS RECORDED WITH THE MARICOPA COUNTY ASSESSOR.

LOCATION: 1208 W. MALIBU DRIVE, TEMPE, AZ 85282

This office will submit this complaint to the Development Services Abatement Hearing Officer to be placed on the Hearing Officer agenda of 08/05/08. We are requesting Hearing Officer Authorization to abate this public nuisance in accordance with Section 21-53 of the Tempe City Code by removal and repair of:

1. **Removal of all un-controlled growth (alive or dead) including grass and weeds in the gravel front and side yards landscape.**
2. **Removal of all over height grass and weeds (alive or dead) in the back yard and dead growth in the backyard.**
3. **Removal of all junk and debris (computers, boxes, plastic bags, wood, scrap metal and other miscellaneous items) stored in the driveway, front yard, back yard or side yards, and on the red trailer in the driveway.**
4. **Removal of the unregistered/inoperable wrecked silver Monte Carlo with no tag that is currently being utilized for the storage of junk that is parked in the driveway.**
5. **Removal of the red trailer with a flat tire that is parked in the driveway.**
6. **Removal of any other unregistered vehicle or trailer that is not registered or is inoperable.**
7. **Replacement or repair of the deteriorated fence that is broken, missing boards, and leaning in the front and backyard(s.)**

As owner of the property, you have thirty (30) days after receipt of this letter to abate or correct the violation. If the violations have not been corrected within thirty days, our office will proceed with the abatement process. Upon receipt of the Hearing Officer approval to abate this public nuisance, the necessary work will be performed at the expense of the property owner. The cost of this work will be **$1,160**. In addition to the actual cost of abatement, an administrative charge of fifteen (15) percent of the actual cost of abatement or three hundred ($300) dollars, whichever is greater, for expenses incurred by the city for abatement procedures, and the cost of recording liens and releases will be charged. The recorded lien may bear interest at the legal rate for judgments in the State of Arizona. Administrative charges and the cost of recording liens and releases shall become a lien on the property whether or not the public nuisance is abated by the City.

If you have questions regarding this matter, please contact our office at (480) 350-8372.

Code Inspector: JODY BENSON

Phone Number: (480)350-8671
E-mail: JODY_BENSON@TEMPE.GOV

JACK HARRINGTON
6828 N. 25TH DR., #B
PHOENIX, AZ 85017
TEL: (602) 446-2630
FAX : (602) 347-5487

FAX COVER & PROPOSAL

FAXED TO THE FOLLOWING NUMBER(S):480-858-2278

THE FOLLOWING DOCUMENT IS FOR:

NAME: JODY

FIRM: CITY OF TEMPE CODE CONPLANCE

THIS TRANSMISSION MEMORANDUM PLUS 0 PAGE(S)

DATE: 6-19-08 **TIME:** 3:35 **A.M.** **P.M.**

PROPOSAL

WE PROPOSE TO DO THE FOLLOWING WORK FOR THE CITY OF TEMPE UNDER CONTRACT #T08-092-02.
ADDRESS : 1208 W MALIBU

1. REMOVE 3 VEHICLES FROM PROPERTY 3@ $135.00/	$ 405.00
2. MOW AND REMOVE WEEDS FROM FRONT & BACK YARDS 15 MH @ 22./	330.00
3. RESTAND & REPLACE MISSING SLATS WEST SIDE FRONT	50.00
4. STRAIGHTEN REAR FENCE & REPLACE MISSING SLATS	75.00
5. REMOVE ALL JUNK& DEBRIS FROM BACK YARD APPX 44 CU YARD	300.00
TOTAL COST FOR ABOVE IDEMS	$1160.00

THANK YOU

JACK HARRINGTON

ACCEPTANCE

_____

CASE # CE080124

CODE INSPECTOR KRISTEN BATTAFARANO
480-350-2893
E-MAIL: kristen_battafarano@tempe.gov
Date Mailed: 1/8/08

KENTON BROWN
1208 W MALIBU DR
TEMPE, AZ 85282

NOTICE TO COMPLY

City of Tempe Code Compliance Division
Notice to Comply: Article I. Nuisances

This notice to comply is to inform you that on 1/7/08, 1208 W MALIBU DR was inspected and found to be in violation of the following subsection(s) of the Nuisance and Property Enhancement Ordinance, Chapter 21, Article I, of the Tempe City Code. A re-inspection will be conducted on 1/31/08 or after the date indicated to verify compliance. If the property is brought into compliance with the code you will not be subject to citations or fines for the violation(s).

21-3 (b) (1): Filthy, littered, debris or trash covered exterior areas, including exterior areas under any roof area 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 .

21-3 (b) (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.

21-4-(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

PLEASE TAKE THE FOLLOWING ACTIONS BY 01/31/08

- **PLEASE REMOVE ANY OF THE ITEMS LISTED IN 21-3 (b) (1) FROM THE CARPORT.**
- **PLEASE REMOVE ANY DEAD BUSHES, TREES, DROPPED FRUIT, OR BRANCHES FROM WITHIN THE FRONT YARD TO AVOID A $100 FINE.**
-
- **PLEASE MOUNT THE ADDRESS NUMBER IN A PLACE ON THE HOUSE WHERE IT IS VISIBLE FROM THE STREET TO AVOID A $100 FINE.**

We appreciate your cooperation in this matter. For questions or further information please contact the Code Enforcement Division at 480-350-8372. Failure to comply may result in civil citation, criminal charges or abatement of the violation.

Civil and Criminal Penalties

Section 21-3, Enumerated Violations subsections (b) 1-8 and 17-19, Section 21-4 Enumerated Violations 1-4: 1st occurrence $100 dollars per violation, 2nd occurrence $200 dollars per violation, 3rd occurrence $300 dollars per violation.
Section 21-3, Enumerated Violations subsections (b) 9-16: 1st occurrence $300 dollars per violation, 2nd occurrence $600 dollars per violation, 3rd occurrence $900 dollars per violation.
The city has authority to abate the violation should the owner neglect, fail, or refuse to correct the violation within (30) days and to assess a lien against the property for cost of abatement.
The city prosecutor is authorized to file a criminal class 1 misdemeanor complaint in the Tempe Municipal Court for violations of this chapter.

CE21-1 07/18

CASE #_CE080124-2__

CODE INSPECTOR KRISTEN BATTAFARANO
480-350-2893
E-MAIL: kristen_battafarano@tempe.gov
Date Mailed: 2/4/08

KENTON BROWN
1208 W MALIBU DR
TEMPE, AZ 85282

NOTICE TO COMPLY

City of Tempe Code Compliance Division
Notice to Comply: Article I. Nuisances

This notice to comply is to inform you that on 2/1/08, 1208 W MALIBU DR was inspected and found to be in violation of the following subsection(s) of the Nuisance and Property Enhancement Ordinance, Chapter 21, Article I, of the Tempe City Code. A re-inspection will be conducted on 2/28/08 or after the date indicated to verify compliance. If the property is brought into compliance with the code you will not be subject to citations or fines for the violation(s).

21-3 (b) (1): Filthy, littered, debris or trash covered exterior areas, including exterior areas under any roof area 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 .

PLEASE TAKE THE FOLLOWING ACTIONS BY 2/28/08

- **PLEASE REMOVE ANY OF THE ITEMS LISTED IN 21-3 (b) (1) FROM THE CARPORT, OR NEATLY PLACE THEM IN STORAGE CONTAINMENT AGAINST THE HOUSE.**

We appreciate your cooperation in this matter. For questions or further information please contact the Code Enforcement Division at 480-350-8372. Failure to comply may result in civil citation, criminal charges or abatement of the violation.

Civil and Criminal Penalties

Section 21-3, Enumerated Violations subsections (b) 1-8 and 17-19, Section 21-4 Enumerated Violations 1-4: 1st occurrence $100 dollars per violation, 2nd occurrence $200 dollars per violation, 3rd occurrence $300 dollars per violation.
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The city prosecutor is authorized to file a criminal class 1 misdemeanor complaint in the Tempe Municipal Court for violations of this chapter.

CE21-1 07/18

06/24/2008 14:26

BLACK
HAWK
STOUT
06/24/2008 14:26

06/24/2008 14:26

06/24/2008 14:26

06/17/2008 09:45

06/17/2008 09:46

06/17/2008 09:46

06/17/2008 09:47

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06/24/2008 14:25

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