

SAFETY, HEALTH, SANITATION AND NUISANCE

177 370 420

**Article 8-5**      **PROCEDURE**

8-5-1      Repealed <sup>420</sup>

8-5-2      Abatement of Nuisances and Code Violations <sup>420 468</sup>

Section 8-5-2      Abatement of Nuisances and Code Violations

- A. If the Town Manager or his designee determines that a nuisance, as defined in this Code, or any violation of this Chapter exists on any property, he shall provide reasonable written notice of the nuisance or violation to the owner and to the occupant or lessee of the property. The notice shall be either personally served or mailed to the owner, and to the occupant or lessee, at his last known address by certified mail, or the address to which the tax bill for the property was last mailed. If the owner does not reside on the property, a duplicate copy of the notice shall be sent to him at his last known address. The notice shall contain a legal description of the property, specify the nature of the nuisance or violation, and state the estimated cost to be assessed in the event that the nuisance or violation is removed or abated. The notice shall advise the persons to whom it is sent that in the event that the violation is not corrected within thirty (30) days from the date upon which the notice is given, the Town will cause the violation or nuisance to be corrected, removed or abated with all costs assessed against the owner, lessee or occupant, individually or jointly, for the removal or abatement of the violation or nuisance, in addition to any civil or criminal fines which may be imposed pursuant to this Chapter. The Town may record the notice in the county recorder's office. If subsequent satisfaction or compliance with the notice is obtained, the Town shall record a release of the notice.
- B. The notice shall also advise that the notice of nuisance/violation and any assessment of costs may be appealed in writing to the Town Council within ten (10) days after notice is given, unless the removal or abatement is ordered by a Court. Such appeal shall be written and filed with the Town Clerk and shall set forth the basis upon which the Town Council is requested to reverse the determination of the Manager or his designee. The Town Council may reverse, modify, affirm or remand the matter to the Town Manager or his designee. If the Manager is affirmed or modified, the owner, occupant or lessee affected by the notice shall have an additional ten (10) days from the date of the Town Council action in which to remove or abate the violation or nuisance. <sup>468</sup>
- C. If any person with an interest in the property, including an owner, lienholder, lessee or occupant, after notice as required in Subsection A hereof, does not remove and abate the violation or nuisance, the Town Manager may remove, abate, enjoin or cause removal and abatement, and cause a statement of costs of such removal or abatement by the Town to be issued individually, jointly or severally against the owner, occupant or lessee. Costs of abatement, injunction or removal by the Town shall include actual cost of such removal or abatement, including five percent (5%) for additional inspection and other incidental connected costs. Such sum, and associated legal costs for abatement or injunctions, shall be assessed against the lot or

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tract of land if it remains unpaid thirty (30) days after the date of the statement of costs.

- D. The assessment shall be recorded in the county recorder's office, including the date and amount of the assessment, the legal description of the property and the name of the Town. The assessment, from the date of its recording in the office of the county recorder, shall be a lien on the lot or tract of land and the several amounts assessed against such lot or tract of land until paid. Such assessments recorded after July 15, 1996, are prior and superior to all other liens, obligations, mortgages or other encumbrances, except liens for general taxes. A sale of the property to satisfy an assessment obtained under the provisions of this section shall be made upon judgment of foreclosure and order of sale. The Town may bring an action to enforce the assessment in Superior Court in Maricopa County at any time after recording of the assessment, but failure to enforce the assessment by such action shall not affect its validity. The recorded assessment shall be prima facie evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the recording thereof. A prior assessment for the purposes provided herein shall not be a bar to a subsequent assessment or assessments for such purposes, and any number of liens or assessments on the same lot or tract of land may be enforced in the same action. Assessments that are imposed under this section shall run against the property until paid and are due and payable in equal annual installments as provided in A.R.S. § 9-499. An assessment that is past due accrues interest at the rate prescribed by A.R.S. § 44-1201.
- E. For the purpose of this section, notice is deemed "given" when it is personally served or certified mail is signed for. If certified mail is returned as refused or undelivered, notice is deemed "given" as of the last date of publication as provided in A.R.S. § 39-204. "Property" includes buildings, grounds, lots and tracts of land.

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### **Article 8-6 COMMUNITY ENHANCEMENT** <sup>417</sup>

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#### Section 8-6-1 Definitions <sup>517</sup>

The following definitions shall apply to this Article:

- A. "Bodies of water" means a constructed or excavated area designed to hold water on a continuous basis other than a swimming pool or spa.
- B. "Debris" means, including but not limited to, junk, lumber, furniture, household fixtures, trash, rubbish, garbage, refuse of any kind or nature.
- C. "Deteriorated Condition" means unsightly conditions including, but not limited to, the accumulation of debris; fences or walls characterized by holes, breaks, rot, crumbling, cracking, peeling or rusting; landscaping that is dead, damaged, characterized by uncontrolled growth or lack of maintenance, and any other similar conditions of disrepair.
- D. "Deteriorate or Deterioration" means a diminution in quality in the condition or appearance of a building or structure or parts thereof, the fact or process of decay or degeneration, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting, vermin infestation, unsafe or unsanitary conditions, or any other evidence of physical decay or neglect or excessive use or lack of maintenance.
- E. "Inoperable Vehicle" means a vehicle which exhibits one or more of the following conditions: physically incapable of operation, wrecked or partially dismantled, on jacks, blocks or similar equipment, abandoned, unable to be safely operated, deflated tires, or from which the chassis, engine, wheels or tires have been removed, or without valid registration.

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- F. "Owner or Owner of Record", as used within this Article, shall be presumed to be the person(s) or entity indicated on the records of the Maricopa County Assessor as the owner of the property in question on the date of any alleged violation.
- G. "Occupant" means a person who is occupying a building or structure and is using it as a place of abode, a place of residence or a place to live on either a temporary or permanent basis.
- H. "Unscreened" means any unroofed portion of the property 1) visible from a street, right of way or public property; and 2) not screened by a substantially opaque fence, dense shield of vegetation, walls, shade structure or building at least five (5) feet high.
- I. "Vegetation" or "Landscaping" means plant growth, whether living or dead, characterized by grass, weeds, bushes, cactus or trees.

### Section 8-6-2 Enumerated Violations <sup>517 2016-08</sup>

It is unlawful, a civil and criminal violation of this Code, and a public nuisance for any occupant, lessee or owner:

- A. To leave or permit to remain any inoperable vehicle when such vehicle or part thereof is located in an unscreened area.
- B. To leave or allow in an unscreened area
  - 1. grass which exceeds six (6) inches in height;
  - 2. weeds which exceed six (6) inches in height;
  - 3. dry vegetation, tumbleweeds, branches or clippings; or
  - 4. dead trees, bushes or shrubs.
- C. To leave or permit to remain on the property any accumulation of rubbish, trash, filth, debris or other deteriorated conditions.
- D. To leave or permit to remain on the property for more than thirty calendar days any stockpiles of dirt, decomposed granite, sand or other material unless an active building permit is obtained and the stockpile is necessary for the construction project related to such building permit.
- E. To leave or permit to remain on the property for more than thirty calendar days any dumpster or other trash receptacle in plain view from off-site unless an active building

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- permit is obtained and the trash receptacle is necessary for the construction project related to such building permit.
- F. To cause or allow a condition which may harbor insect or rodent infestation, or which may likely become a fire hazard, or which may result in a condition which may threaten the safety or health of neighboring properties or the public.
  - G. To cause or permit any object, debris, building, tree, bush or landscaping to interfere with, obstruct, tend to obstruct, or render dangerous the free passage, use or vision in the customary manner of any sidewalk, street, or right of way or in violation of the Town Code.
  - H. To cause or permit any vegetation or landscaping, that is visible from public property, that is substantially dead or damaged, characterized by uncontrolled growth or lack of maintenance, or any other deteriorated condition.
  - I. to cause or permit Any pool, spa, fountain, or other body of water to be improperly maintained so as to create a safety hazard, harbor insect infestation, be polluted, or become stagnant.
  - J. To allow or permit any wall or fence that is missing blocks, boards, or other material, to deteriorate due to lack of maintenance so as to constitute a hazard to persons or property.
    - (1) Allow or permit 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 Town, or any vacated or abandoned building or structure to be unsecured at any time resulting in a condition which may threaten the safety or health of neighboring properties or the public.
    - (2) The means, methods, or materials used for securing a vacated or abandoned building or structure, such as wood, metal, or any other item, must be compatible with the color of the building.
  - K. To allow or permit cattle, horses, sheep, goats, dogs, cats, birds, fowl, or any other animal or bird, and the pens, stalls, yards, shelters, cages, areas, places and premises where they are held or kept, to be maintained in such a manner as to cause flies, insects, vermin, rodent harborage, or to allow odors, ponded water or other liquid, the accumulation of manure, garbage, refuse or other noxious materials to become a public health nuisance.
  - L. To allow or permit colonies of feral bees, hornets, or wasps, or colonies of honeybees maintained for the production of honey to become a public nuisance.
  - M. Notwithstanding any other provisions of this Chapter, a person who commits a nuisance or willfully omits to perform any legal duty relating to the removal of a

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nuisance not enumerated in this chapter, but otherwise provided for within the scope and authority to regulate nuisances as granted to the Town by State Law, shall be in violation of this chapter, provided the violation poses a present hazard to public health, safety and welfare.

### Section 8-6-3 Violations Not Exclusive

Violations of this Article are in addition to any other violation enumerated within the Town ordinances and Code and in no way limits the penalties, actions or abatement procedures which may be taken by the Town for any violation of this Article which is also a violation of any other ordinance of the Town, or statute of the State of Arizona.

### Section 8-6-4 Option to Proceed Criminally or Civilly

The health officer or his designee (hereinafter referred to as "health officer") may proceed pursuant to this Article by citation for civil sanctions or by criminal complaint pursuant to the general penalties provision of § 1-9-2 of this Code.

### Section 8-6-5 Commencement of Civil Action, Citation, Contents

- A. The health officer is assigned the responsibility of enforcing this Article and is granted the authority expressly granted and impliedly needed and necessary for enforcement.
- B. The health officer is authorized to commence an action under this Article by issuing a citation to the occupant of the property where the violation has occurred, or to the owner of record, or to both.
- C. The citation will be substantially in the same form as the Arizona traffic citation form currently in use and shall direct the defendant to appear in Municipal Court or pay the civil sanction imposed pursuant to § 8-6-9(A) within twenty (20) days after issuance of the citation. The form shall contain a schedule of civil sanctions and penalties which are imposed by the Court.
- D. The citation may be signed by the occupant, lessee or owner with his promise to appear or pay the civil sanction imposed as provided in § 8-6-9(A) within twenty (20) days of the issuance of the citation. If the occupant, lessee or owner is unavailable at the time the violation is noted, service may be accomplished and will be deemed proper and complete if the citation is either personally served or mailed to the owner, occupant or lessee at his last known address by certified mail, or the address to which the tax bill for the property was last mailed, or in any manner provided by the Rules of Civil Procedure.

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### Section 8-6-6 Presumption that Owner is Responsible

The owner of record, as recorded in the Maricopa County Recorder's Office records, of the property upon which a violation of this Article exists shall be presumed to be a person having lawful control over any building, structure or parcel of land. If more than one person shall be recorded as the owner of the property, the persons shall be jointly and severally presumed to be persons having lawful control over the building, structure or parcel of land. This presumption shall not prevent enforcement of the provisions of this Article against any other person, lessee or occupant specified in this Article.

### Section 8-6-7 Civil Sanction, Appearance or Payment by Mail

The defendant shall within twenty (20) days of the issuance of the civil citation appear in person or through his attorney in the Municipal Court and shall either admit or deny the allegations contained in the citation. If the defendant admits the allegations, the Court shall immediately enter judgment against the defendant in the amount of the civil sanction for the violation charged as set by this Article. If the defendant denies the allegations contained in the citation, the Court shall set a hearing date for trial of the matter.

### Section 8-6-8 Default Judgment

If the defendant fails to appear as directed on the citation, the Court shall enter a default judgment for the amount of the civil sanction indicated for the violation charged, together with any allowable penalty for the defendant's failure to appear as established by the Court. If the defendant fails to appear at a prehearing conference as set by the Court, the Court shall nonetheless set the matter for trial. If a defendant fails to appear at a trial, the Court may enter judgment against the nonappearing defendant for the amount of the civil sanction plus allowable penalty for failure to appear. No judgment may be entered against a fictitiously identified defendant.

### Section 8-6-9 Civil Sanctions Imposed

#### A. *Civil sanction schedule:*

The civil sanction for violating Section 8-6-2 shall be an amount not to exceed two hundred fifty dollars (\$250.00).

#### B. *Civil penalties imposed for failure to appear:*

In addition to the amount of the civil sanction imposed under subsection A above, there is imposed a civil penalty in the same amount as the civil sanction should the defendant fail to appear and answer for a violation of Section 8-6-2 within the time period stated on the citation or fails to appear at the time and place set for any hearing of a matter arising under this Article.

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### Section 8-6-10 Rules of Procedure

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

### Section 8-6-11 Collection of Civil Sanctions, Lien

Any judgment for a civil sanction or penalty imposed pursuant to this Article shall constitute a lien against the real property of the defendant which may be perfected by recording a copy of the judgment under seal of the Town with the Maricopa County Recorder. Any judgment for civil sanctions or penalties taken pursuant to this Article may be collected as any other civil judgment.

### Section 8-6-12 Abatement

- A. Any nuisance defined in this Article may be abated as provided in Article 8-5 of this Code or in any other manner authorized by law.
- B. In addition to any other sanction or penalty authorized by law or ordinance for civil or criminal prosecution of violations herein, or for abatement as a public nuisance, the Court may issue an order permitting the Town to abate the condition giving rise to the violation. The reasonable costs of any such abatement shall be the responsibility of the person found responsible or guilty of the violation.
- C. After notice to the owner, lessee, occupant or any responsible party, the judge or Court hearing officer shall conduct a hearing before issuing an abatement order. The hearing shall be informal and open to the public. Evidence may be taken from any interested party and considered in determining whether a condition in violation of this Article exists and what, if any, abatement action should be permitted. Any person who fails to appear after notice of the hearing may be deemed to have waived any right to introduce evidence. The Court's determination shall be based on the preponderance of evidence. Upon finding that abatement is appropriate, the Court may order removal, board-up, clean-up or any other action the Court deems reasonably necessary to correct the violation. The reasonable costs of any abatement permitted by Court order shall be the responsibility of the owner and may be collected as other costs of abatement provided for by ordinance or law.
- D. If a defendant fails to correct any violation charged within thirty (30) days of the issuance of the first citation, the Town Attorney may also proceed without further notice to commence an injunctive action for abatement of the violation. Any action taken under this Article shall be in addition to any other remedies provided for in this Code.

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### Section 8-6-13 Notice of Violation, Recording

A. When the health officer determines a violation of this Article exists, the health officer may notify the occupant, owner or responsible party through the issuance of a notice of violation. A notice of violation issued shall include:

1. Identification of the property in violation
2. Statement of violations in sufficient detail to allow an owner or responsible party to identify and correct the problem
3. Reinspection date
4. Address and phone number of a Town representative to contact
5. Town's authority to abate if the owner, lessee or occupant does not correct the violation and to assess a lien against the property for the costs of abatement
6. Appeal procedures
7. Civil and criminal sanctions for violations and Court orders of abatement.

Nothing in this section shall require the issuance of a notice of violation prior to the commencement of civil or criminal violation proceedings.

B. The Town may record a notice of violation with the Maricopa 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 requester's expense.

C. The transfer of any and all property interests in any manner, including but not limited to the sale, trade, lease, gift or assignment of any real property against which a notice of violation has been issued shall not relieve the party(s) served unless the legal entity assuming an ownership interest in such property, in writing, assumes responsibility for compliance with the notice of violation and a copy of such writing is presented to the Town. Any legal entity, real or statutory, who transfers the ownership interest in real property against which a notice of violation has been served without obtaining a written acceptance of liability from the new owner for the items listed in the notice of violation shall be guilty of a misdemeanor.

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### Section 8-6-14 Inspections and Authority

- A. The Town is authorized to make inspections of property to determine compliance with this Article. An inspector may expand the scope of any inspection to include other Town Code violations noted during inspection.
- B. Unscreened exterior areas, buildings, structures and lands may be inspected at any time with or without the involvement of the owner, occupant or responsible party in accordance with legal requirements.

### Section 8-6-15 Each Day Separate Violation

Each day that a violation of this Article is permitted to continue or occur by the defendant shall constitute a separate offense which is subject to separate civil or criminal citation pursuant to the provisions of this Article.