

# Staff Summary Report



Council Meeting Date: 03/05/09

Agenda Item Number: \_\_\_\_\_

**SUBJECT:** This is the second public hearing to amend Chapter 28 of the Tempe City Code relating to Solid Waste by amending Sections 28-1, 28-11 and 28-12; and adding new Section 28-2 relating to Property Maintenance.

**DOCUMENT NAME:** 20090305cacc02 **TCC CH 28 - SOLID WASTE (0503-28)** Ordinance No. 2009.10

**SUPPORTING DOCS:** No

**COMMENTS:** This ordinance will ensure effective enforcement of code violations for solid waste disposal, including alleys and rights-of-way within the City of Tempe.

**PREPARED BY:** Ron Lopinski, Solid Waste Code Inspector (Ext. 8132)  
Joseph Kolesar, Solid Waste Code Inspector (Ext. 8126)

**REVIEWED BY:** Glenn Kephart, Public Works Manager (Ext. 8205)  
John Osgood, Deputy Public Works Manager (Ext. 8949)  
Mary Helen Giustizia, Solid Waste Services Director (Ext. 8151)

**LEGAL REVIEW BY:** Judi Morgan, Assistant City Attorney (Ext. 8779)

**FISCAL NOTE:** N/A

**RECOMMENDATION:** Staff recommends adoption of Ordinance No. 2009.10.

**ADDITIONAL INFO:** The Ordinance provides enforcement for violations of solid waste code enforcement issues including disposal of solid waste, property deterioration and dumping. The Ordinance authorizes quick and effective clean-up and abatement of property, as well as recoupment of costs back to the City.

The staff of the Field Operations Division of the Public Works Department has reviewed the Code in its entirety and is preparing a comprehensive update and amendment to Code Sections 28 and 29. These extensive revisions will be submitted for Council consideration in the future. This Ordinance is the initial revision concerning abatement, notification and the ability to collect costs expended by the City for property maintenance.

**ORDINANCE NO. 2009.10**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 28, TEMPE CITY CODE, RELATING TO SOLID WASTE BY AMENDING SECTIONS 28-1, 28-11 AND 28-12; AND ADDING NEW SECTION 28-2 RELATING TO PROPERTY MAINTENANCE.**

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

**Section 1.** That Section 28-1 of the Tempe City Code is hereby amended to read as follows:

**Sec. 28-1. Definitions.**

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*ABATE OR ABATEMENT* MEANS TO REMOVE, REMEDIATE OR TERMINATE A PUBLIC NUISANCE OR VIOLATION OF THIS CHAPTER.

*ABATEMENT COST* MEANS ANY AND ALL EXPENSES, COSTS AND FEES EXPENDED BY THE CITY OR ITS DESIGNEE IN REMOVING, ENJOINING OR TERMINATING A PUBLIC NUISANCE OR VIOLATION, AS WELL AS ANY DAMAGE TO PERSONS OR PROPERTY CAUSED BY THE PUBLIC NUISANCE OR VIOLATION.

*Alley* means any public space or thoroughfare twenty (20) feet or less in width which has been dedicated or granted for public use.

*COMMERCIAL CONTAINER* MEANS ANY SOLID WASTE OR RECYCLING CONTAINER USED BY A COMMERCIAL ESTABLISHMENT.

*Commercial establishment* means any public or private place, building or enterprise utilized for the conduct of business or industrial enterprise, but not to include any residential establishments.

*COMMERCIAL HEAVY WASTE* MEANS DIRT, ROCK, CONCRETE, CARPET, TILE, GLASS, WET OR HEAVY GREEN WASTE FROM LANDSCAPERS, PLASTER, ASPHALT, ROOFING MATERIALS, LARGE PANES OF GLASS/MIRRORS, HEAVY METALS, AND ANY OTHER HEAVY WASTE MATERIAL PRODUCED BY A COMMERCIAL ESTABLISHMENT.

*COMMERCIAL NON-COLLECTIBLE ITEMS* MEANS TIRES, PAINT, MOTOR OIL, GASOLINE, CAR PARTS AND BATTERIES, PROPANE TANKS, COMPUTER PARTS, MEDICAL WASTE, LIQUID WASTE, AND ANY OTHER DANGEROUS OR HAZARDOUS WASTE.

*Commercial solid waste* means all ACCEPTABLE garbage and trash generated by commercial establishments except hazardous wastes and COMMERCIAL non-collectible items.

*CONSTRUCTION WASTE AND DEMOLITION DEBRIS* MEANS DIRT, ROCK, CONCRETE, CONSTRUCTION AND DEMOLITION DEBRIS, LUMBER, RAILROAD TIES, ROLLS OF CARPETING, LARGE PANES OF GLASS/MIRRORS, PLASTER, ASPHALT, AND ROOFING MATERIALS.

*CONTAIN* MEANS TO PLACE REFUSE IN A PUNCTURE RESISTANT BAG OR BOX, OR BUNDLE AND STACK UNCONTAINED ITEMS IN AN APPROPRIATE MANNER SO AS TO AID IN THE COLLECTION PROCESS.

*CONTAINER* MEANS ANY RECEPTACLES USED FOR THE COLLECTION OF REFUSE OR RECYCLABLE MATERIALS AND AS APPROVED BY THE PUBLIC WORKS MANAGER. THIS SHALL INCLUDE SIXTY-FIVE (65), NINETY (90) AND THREE HUNDRED (300) GALLON CONTAINERS; FOUR (4), SIX (6) AND EIGHT (8) CUBIC-YARD FRONT LOADERS; TEN (10), FIFTEEN (15), TWENTY-FIVE (25) AND FORTY (40) CUBIC-YARD ROLL-OFFS; AND CUBIC YARD COMPACTORS LESS THAN THIRTY-ONE (31), THIRTY-ONE (31) TO FORTY (40), AND MORE THAN FORTY (40) CUBIC YARDS.

*CONTAMINATION* MEANS MATERIALS THAT ARE PLACED IN A SOLID WASTE CONTAINER, INCLUDING BUT NOT LIMITED TO, HAZARDOUS WASTE AND RESIDENTIAL/COMMERCIAL NON-COLLECTIBLES, OR OTHER MATERIALS THAT ARE NOT DESIGNATED AS RECYCLABLES.

*Contractor* means a person, persons or corporate ~~entity~~ ESTABLISHMENT engaged in the business of collecting, hauling or transporting commercial solid waste or special material in the city for disposal or any other purpose.

*DOMESTIC ANIMAL WASTE* MEANS FECES OR DISCARDED BEDDING OR FLOORING MATERIALS SUCH AS STRAW, SAWDUST, OR OTHER MATERIALS FROM YARDS, PENS, CORRALS, STABLES OR OTHER CONTAINMENT FROM DOMESTIC ANIMALS OR PERMITTED WILD ANIMALS WEIGHING LESS THAN ONE HUNDRED FIFTY (150) POUNDS.

*Fence* means any barrier erected, installed or planted to mark the boundaries of any lot or parcel of land and made of posts and wire, boards or similar materials or formed by a dense row of shrubs or trees.

*Freestanding wall* means any masonry barrier erected or constructed to mark the

boundaries of any lot or parcel of land and made of masonry, concrete or similar materials and standing alone on its own foundation free of supporting frame or attachment.

*Garbage* means all putrescible SOLID wastes, except sewage and body wastes, including all organic wastes that have been prepared for or intended to be used as food or have resulted from the preparation of food, including all such substances from all public and private establishments and residences.

*GREEN WASTE* MEANS BRUSH, TREE TRIMMINGS, GRASS, LEAVES OR SIMILAR LANDSCAPING OR PLANT MATERIAL OF AN ORGANIC NATURE.

*Hazardous wastes* means all wastes that are hazardous by reason of their pathological, explosive, flammable, radiological or toxic nature, including but not limited to, all wastes defined as hazardous by A.R.S. § 49-921.

*IMMINENT HEALTH OR SAFETY HAZARD* MEANS ANY CONDITION OF REAL PROPERTY, REFUSE OR RECYCLING CONTAINER THAT PLACES LIFE, HEALTH, SAFETY OR PROPERTY IN HIGH RISK OF PERIL WHEN SUCH CONDITION IS IMMEDIATE, IMPENDING OR MENACING.

*INDUSTRIAL SOLID WASTE* MEANS ANY SOLID WASTE AS DEFINED IN THIS SECTION PRODUCED AS A RESULT OF ANY INDUSTRIAL OPERATIONS.

*INJUNCTIVE RELIEF* MEANS A COURT ORDER TEMPORARILY OR PERMANENTLY ENJOINING ANY PERSON OR ESTABLISHMENT FROM COMMITTING ANY ACT IN VIOLATION OF THIS CHAPTER. INJUNCTIVE RELIEF IS IN ADDITION TO ALL PENALTIES AND OTHER REMEDIES PRESCRIBED IN THIS SECTION.

*LANDSCAPER* MEANS ANY PERSON OR ESTABLISHMENT WHO IS IN THE BUSINESS OR PROFESSION OF GARDENING OR IMPROVING THE APPEARANCE OF LAND BY PLANTING OR TRIMMING TREES, SHRUBS, GRASS, OR OTHER VEGETATION, OR ALTERING THE CONTOURS OF THE GROUND.

*LIQUID WASTE* MEANS ANY WASTE MATERIAL IN THE FORM OF A LIQUID OR THAT PRODUCES A LIQUID AT ANY TIME, INCLUDING BUT NOT LIMITED TO, GREASE, OIL OR FOOD. THIS SHALL NOT INCLUDE DOMESTIC SEWAGE OR HAZARDOUS WASTE MATERIALS.

*LIVESTOCK WASTE* MEANS FECES OR DISCARDED BEDDING OR FLOORING MATERIALS SUCH AS STRAW, SAWDUST, OR OTHER MATERIALS FROM YARDS, PENS, CORRALS, STABLES OR OTHER CONTAINMENT FROM LIVESTOCK AND FOWL, INCLUDING CATTLE, HORSES, PIGS, CHICKENS OR OTHER DOMESTIC OR PERMITTED WILD ANIMALS WEIGHING OVER ONE HUNDRED FIFTY (150) POUNDS.

*MEDICAL WASTE* MEANS ANY SOLID OR LIQUID WASTE GENERATED IN THE

DIAGNOSIS, TREATMENT, TESTING OR IMMUNIZATION OF A HUMAN BEING OR ANIMAL, OR IN ANY RESEARCH RELATING TO THE DIAGNOSIS, TREATMENT OR IMMUNIZATION, OR IN THE PRODUCTION OR TESTING OF BIOLOGICALS, INCLUDING BUT NOT LIMITED TO, MEDICAL SHARPS AND BIOHAZARDOUS MEDICAL WASTE.

*MATERIAL RECOVERY FACILITY (MRF)* MEANS ANY LOCATION DESIGNATED AS A DROP-OFF LOCATION FOR RECYCLABLES.

*NONPARTICIPANT* MEANS A RESIDENTIAL OR COMMERCIAL CUSTOMER WITHIN ANY AREA OF THE CITY WHERE THE CITY RECYCLING PROGRAM IS IN EFFECT WHO IS NOT PARTICIPATING IN THE RECYCLING PROGRAM, EITHER BY CHOICE OR BY ACTION OF THE CITY.

*NOTICE OF VIOLATION (NOV)* MEANS A FORM NOTIFYING A RESPONSIBLE PARTY OF A VIOLATION OF THIS CHAPTER WITH REASONABLE SPECIFICITY, THE DATE AND TIME OF THE VIOLATION, A DEADLINE FOR COMPLIANCE IF APPLICABLE, AND THE RIGHT TO A HEARING TO CONTEST SAID VIOLATION.

*PUBLIC NUISANCE* MEANS ANYTHING WHICH IS INJURIOUS OR OBNOXIOUS TO HEALTH OR OFFENSIVE TO THE SENSES, OR IS AN OBSTRUCTION TO THE FREE USE OF PROPERTY, SO AS TO INTERFERE WITH THE COMFORTABLE ENJOYMENT OF LIFE OR PROPERTY BY ANY CONSIDERABLE NUMBER OF PERSONS, OR WHICH OBSTRUCTS THE FREE PASSAGE OR USE, IN THE CUSTOMARY MANNER, OF ANY STREET, ALLEY, SIDEWALK OR PUBLIC PROPERTY.

*Public works manager* means the manager of the public works department or designee.

*PUTRESCIBLE SOLID WASTE* MEANS SOLID WASTE WHICH IS CAPABLE OF BEING DECOMPOSED BY MICROORGANISMS WITH SUFFICIENT RAPIDITY AS TO CAUSE NUISANCES FROM ODORS OR GASES AND CAPABLE OF PROVIDING FOOD FOR OR ATTRACTING BIRDS, INSECTS, SNAKES, RODENTS OR OTHER ANIMALS CAPABLE OF TRANSFERRING A DISEASED BACTERIUM OR VIRUS FROM ONE ORGANISM TO ANOTHER.

*RECYCLABLES* MEANS ANY SOLID WASTE AS DESIGNATED BY THE CITY FROM TIME TO TIME, THAT HAS BEEN SEPARATED FROM OTHER SOLID WASTE FOR THE PURPOSE OF BEING COLLECTED AND RECYCLED.

*Recycling container* means any container, whether operated for profit or not, where the public is asked to bring any materials to be donated or left to be recycled, reclaimed, processed or reused, including, but not limited to, newspapers, bottles, metal cans, and used clothing and furniture.

*REFUSE* MEANS ANY GARBAGE, TRASH AND COLLECTIBLE CONTAINED ITEMS.

*RESIDENTIAL CONTAINER* MEANS ANY SOLID WASTE AND RECYCLING CONTAINER USED BY A RESIDENTIAL ESTABLISHMENT.

*Residential establishment* means any structure or premises used as a domicile, dwelling, or habitation, including RESIDENTIAL single-UNIT ~~family~~ dwellings, RESIDENTIAL multi-UNIT ~~family dwelling units~~ DWELLINGS, duplexes, patio homes, mobile home parks, trailer courts, rooming houses, boarding houses, assisted living facilities, apartments, condominiums, townhouses, COMBINATION RESIDENTIAL AND COMMERCIAL STRUCTURES, or any complex of the foregoing.

*RESIDENTIAL MULTI-UNIT DWELLING* MEANS A DOMICILE, DWELLING OR HABITATION, INCLUDING A RENTAL DWELLING, THAT CONTAINS MORE THAN ONE COMPLETE LIVING SPACE, DUPLEX, MOBILE HOME PARK, TRAILER COURT, ROOMING HOUSE, BOARDING HOUSE, ASSISTED LIVING FACILITY, APARTMENT, CONDOMINIUM, TOWNHOUSE, COMBINATION RESIDENTIAL AND COMMERCIAL STRUCTURE OR ANY COMBINATION OF THE FOREGOING. HOWEVER, THIS SHALL NOT INCLUDE A RESIDENTIAL FACILITY PURSUANT TO A.R.S. § 36-582.

*RESIDENTIAL NON-COLLECTIBLE ITEMS* MEANS DIRT, ROCK, CONCRETE, BRICKS, ASPHALT, ROOFING MATERIAL, PLASTER, CONSTRUCTION AND DEMOLITION DEBRIS, LUMBER, RAILROAD TIES, ROLLS OF CARPETING, TIRES, PAINT, CAR PARTS, MOTOR OIL, GASOLINE, HOUSEHOLD/HAZARDOUS CHEMICALS, CAR BATTERIES, PROPANE TANKS, COMPUTER PARTS, LARGE PANES OF GLASS/MIRRORS OR ANY OTHER DANGEROUS OR HAZARDOUS MATERIALS.

*RESIDENTIAL SINGLE-UNIT DWELLING* MEANS A BUILDING OR STRUCTURE OR ANY PARTS THEREOF, USED AS A RESIDENCE BY ONE OR MORE PERSONS, INCLUDING A DOMICILE OR HABITATION THAT CONTAINS ONLY ONE COMPLETE LIVING SPACE. IT ALSO INCLUDES A RESIDENTIAL RENTAL DWELLING UNIT AND RESIDENTIAL FACILITY, PURSUANT TO A.R.S. §§ 9-1301(10) AND 36-582(B).

*RESPONSIBLE PARTY* MEANS AN OCCUPANT, LESSOR, LESSEE, MANAGER, LICENSEE, OWNER OR OTHER PERSON HAVING CONTROL OVER A STRUCTURE OR PARCEL OF LAND. ALSO, IN THE EVENT THAT REMEDIATION OF PROPERTY IS REQUIRED, ANY LIEN HOLDER WHOSE LIEN INTEREST IS RECORDED IN THE OFFICIAL RECORDS OF THE MARICOPA COUNTY RECORDER'S OFFICE RELATING TO SAID PROPERTY.

*SANITARY CONTAINER* MEANS A CONTAINER THAT DOES NOT HAVE UNCONTAINED PUTRESCIBLE WASTE, AN ODOR DETECTIBLE WITHIN TEN (10) FEET WITH LID CLOSED EMANATING FROM IT, OR VECTORS POPULATING WITHIN IT.

*SCAVENGE* MEANS TO COLLECT BY SEARCHING AND REMOVING SOLID

WASTE ITEMS, INCLUDING ANY ITEMS INSIDE OR AROUND A CONTAINER, PUBLIC RIGHT-OF-WAY OR SOLID WASTE FACILITY.

*SHARPS* MEANS OBJECTS SUCH AS SYRINGES, NEEDLES AND LANCETS THAT ARE USED FOR INSULIN INTAKE, BLOOD SAMPLES OR FOR OTHER MEDICAL PURPOSES.

*Solid waste* means any ~~garbage, trash, uncontained items, sludge from a waste treatment plant, water supply treatment plant or pollution control facility~~ REFUSE, GREEN WASTE, LIQUID WASTE, MEDICAL WASTE, DOMESTIC ANIMAL WASTE, and other discarded material, including solid, liquid, semisolid or contained gaseous material but not including domestic sewage or hazardous wastes.

*SOLID WASTE CONTAINERS* MEANS ANY REFUSE OR RECYCLING CONTAINER, FOR EITHER RESIDENTIAL OR COMMERCIAL USE.

*SOLID WASTE FEE* MEANS ANY FEE ASSOCIATED WITH SOLID WASTE SERVICES PROVIDED BY THE CITY AS ESTABLISHED BY CITY COUNCIL RESOLUTION (SEE APPENDIX A).

*SPECIAL COLLECTION* MEANS SOLID WASTE COLLECTION SERVICE PROVIDED BY THE CITY OF COLLECTIBLE ITEMS ONLY, OVER AND ABOVE THE USUAL LEVEL, INCLUDING FREON CONTAINING WHITE GOODS. ASSOCIATED FEES ARE ESTABLISHED BY CITY COUNCIL RESOLUTION (SEE APPENDIX A).

*TARE WEIGHT* MEANS EMPTY WEIGHT OF VEHICLE WITH DRIVER.

*Trash* means combustibles such as paper, wood, yard trimmings or brush and noncombustibles including metal and glass.

*Uncontained items* means all large trimmings from trees and shrubbery, furniture, major appliances (EXCLUDING WHITE GOODS), mattresses and other acceptable materials that are too large to be deposited into containers, THAT ARE GENERATED BY A RESIDENTIAL SINGLE-UNIT DWELLING WITHIN THE CITY.

*WASTE* MEANS MATERIAL OF ANY KIND THAT CONSTITUTES SOLID WASTE, REFUSE, ANIMAL OR LIVESTOCK WASTE, OR MEDICAL WASTE. WASTE INCLUDES ABANDONED OR UNIDENTIFIED PERSONAL PROPERTY LEFT UNATTENDED ON PUBLIC SIDEWALKS AND RIGHTS-OF-WAY OR OTHER PUBLIC AREAS.

*WEIGHT-BASED SERVICE* MEANS A FEE CHARGED FOR COLLECTION OR DISPOSAL SERVICES BASED ON WEIGHT OF THE LOAD, LESS THE TARE WEIGHT, AS ESTABLISHED BY CITY COUNCIL RESOLUTION (SEE APPENDIX A).

*WHITE GOODS* MEANS MANUFACTURED APPLIANCE ITEMS CONTAINING

OR PREVIOUSLY CONTAINING FREON SUCH AS REFRIGERATORS, AIR CONDITIONERS OR FREEZERS.

**Section 2.** That Chapter 28, Article I of the Tempe City Code is hereby amended by adding new Section 28-2 to read as follows:

**SEC. 28-2. PROPERTY MAINTENANCE.**

(A) IT IS UNLAWFUL FOR ANY PERSON TO FAIL TO MAINTAIN RESIDENTIAL OR COMMERCIAL REAL PROPERTY UNDER HIS CONTROL, IN A CLEAN MANNER, FREE FROM GARBAGE, TRASH AND WASTE, INCLUDING BUT NOT LIMITED TO, SOLID WASTE, CONTAMINATION, GARBAGE, REMODELING AND DEMOLITION DEBRIS, HAZARDOUS MATERIALS AND RECYCLABLES.

(B) IT IS UNLAWFUL FOR ANY PERSON TO FAIL TO MAINTAIN AREAS ADJACENT OR ABUTTING TO PROPERTY UNDER HIS CONTROL, INCLUDING ALLEYS, PUBLIC WALKWAYS, PUBLIC STREETS AND RIGHTS-OF-WAY, FREE FROM GARBAGE, TRASH AND WASTE, INCLUDING BUT NOT LIMITED TO, SOLID WASTE, CONTAMINATION, GARBAGE, HAZARDOUS MATERIALS, RECYCLABLES AND COMMERCIAL AND RESIDENTIAL NON-COLLECTIBLE ITEMS.

(C) IT IS UNLAWFUL FOR ANY PERSON TO INTERFERE WITH OR PREVENT THE PUBLIC WORKS MANAGER OR AGENTS THEREOF, WHILE THE CITY IS ADMINISTERING OR ENFORCING THIS CHAPTER. HOWEVER, NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE PURSUIT OF ANY REMEDY IN ANY COURT OF COMPETENT JURISDICTION FOR PROPERTY RIGHTS BY THE OWNER OF ANY PROPERTY WITHIN THE CITY.

**Section 3.** That Section 28-11 of the Tempe City Code is hereby amended to read as follows:

**Sec. 28-11. Administration and enforcement.**

(a) The public works manager is assigned the primary responsibility of ADMINISTERING AND enforcing this chapter and is granted the authority expressly and impliedly needed and necessary for enforcement. THE PUBLIC WORKS MANAGER MAY DESIGNATE ANY AGENTS TO EXERCISE ANY ADMINISTRATIVE AND ENFORCEMENT POWERS AS PROVIDED IN THIS CHAPTER.

(b) Nothing in this chapter shall preclude city employees from seeking voluntary compliance with the provisions of this chapter through notices to comply, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances.

(c) The authority of the city to enforce provisions of this chapter is independent of and in addition to the authority of other city officials to enforce the provisions of any other ordinances

of the city.

(D) IT IS UNLAWFUL TO VIOLATE ANY PROVISION OF THIS CHAPTER. THE FAILURE TO COMPLY WITH ANY REQUIREMENT OF THIS CHAPTER CONSTITUTES A VIOLATION OF THIS CHAPTER. EACH INSTANCE OF A VIOLATION OF THIS CHAPTER MAY BE CONSIDERED A SEPARATE OFFENSE AND ENFORCED AND PROSECUTED ACCORDINGLY. THE PUBLIC WORKS MANAGER MAY SEEK REMEDIES INCLUDING INJUNCTIVE RELIEF, IN ADDITION TO CIVIL PENALTIES AND CRIMINAL PENALTIES AS SET FORTH IN THIS CODE. REMEDIES AVAILABLE PURSUANT TO VIOLATIONS OF THIS CHAPTER ARE CUMULATIVE AND NOT EXCLUSIVE, AND DO NOT LIMIT OR SUPERSEDE ANY AND ALL OTHER LAWFUL REMEDIES.

(E) VIOLATIONS OF THIS CHAPTER SHALL BE CONSIDERED STRICT LIABILITY OFFENSES.

**Section 4.** That Section 28-12 of the Tempe City Code is hereby amended to read as follows:

**Sec. 28-12. Civil Violations AND PENALTIES.**

(A) IF A VIOLATION UNDER THIS CHAPTER OCCURS, THE PUBLIC WORKS MANAGER OR DESIGNEE THEREOF HAS THE AUTHORITY TO ISSUE A NOTICE OF VIOLATION ("NOV"). THE NOV MAY BE ISSUED IN ANY OF THE FOLLOWING WAYS:

- (1) HAND-DELIVERED TO ANY PERSON AT THE ADDRESS WHERE THE VIOLATION PROPAGATED OR BY PERSONAL SERVICE UPON THE OWNER, RESIDENT, OCCUPANT, TENANT OR OTHER RESPONSIBLE PERSON;
- (2) POSTED IN A CONSPICUOUS LOCATION UPON THE REAL PROPERTY WHERE THE VIOLATION PROPAGATED, OR PROPERTY ADJACENT TO OR ABUTTING THE LOCATION OF THE VIOLATION;  
OR
- (3) MAILED TO THE ADDRESS WHERE THE VIOLATION PROPAGATED VIA CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED.

(B) THE NOV SHALL CONTAIN THE DATE AND LOCATION OF THE VIOLATION, REFERENCE TO THE TEMPE CITY CODE PROVISION OR ORDINANCE VIOLATED, AND NOTICE THAT THE VIOLATION MUST BE REMEDIED WITHIN A SPECIFIED TIME.

(C) UPON RECEIPT OF NOV, THE VIOLATION MUST BE REMEDIED WITHIN THE FOLLOWING TIME FRAME:

- (1) AS DIRECTED IN WRITING IN THE NOV BY THE PUBLIC WORKS MANAGER OR DESIGNEE THEREOF DEPENDING ON THE SEVERITY OF THE VIOLATION, BUT IN NO EVENT SHALL SUCH TIME EXCEED THIRTY (30) DAYS; OR
- (2) IMMEDIATELY IF THE VIOLATION POSES AN IMMINENT HEALTH OR SAFETY HAZARD.

(D) THE CITY MAY CORRECT OR ABATE THE CONDITION CONSTITUTING A VIOLATION AT ANY TIME ON OR FOLLOWING THE DATE STATED IN THE NOV. IN ADDITION, SHOULD THE VIOLATION CONSTITUTE OR ESCALATE TO AN IMMINENT HEALTH OR SAFETY HAZARD AS DETERMINED BY THE CITY, OR IN THE EVENT OF REPEATED VIOLATIONS AS SET FORTH IN § 28-13 HEREIN, THE CITY MAY IMMEDIATELY ABATE THE CONDITION.

(E) ANY PERSON IN VIOLATION OF ANY OF THE PROVISIONS OF THIS CHAPTER WILL BE CHARGED FOR ANY AND ALL ABATEMENT COSTS INCURRED, WHETHER PERFORMED BY THE CITY OR ITS DESIGNEE, IN ADDITION TO CIVIL PENALTIES AND FEES AS SET FORTH IN §§ 1-7 AND 1-8 OF THIS CODE. THE PROCEDURE FOR PENALTIES AND FEES FOR VIOLATIONS OF THIS CHAPTER SHALL BE IN ACCORDANCE WITH CHAPTER 1 OF THIS CODE.

(F) ALL ABATEMENT COSTS SHALL BE BILLED TO THE VIOLATING PARTY DIRECTLY BY AND THROUGH THE CITY MUNICIPAL SERVICES STATEMENT OR OTHERWISE, AS DIRECTED BY THE PUBLIC WORKS MANAGER.

(G) THE CITY MUNICIPAL SERVICES STATEMENT SHALL INCLUDE A STATEMENT OF THE DATE AND LOCATION OF THE VIOLATION, REFERENCE TO THE CITY CODE PROVISION OR ORDINANCE VIOLATED, AND NOTICE THAT TO DISPUTE SAID ABATEMENT COSTS, THE VIOLATING PARTY MUST REQUEST A HEARING FROM THE TEMPE MUNICIPAL COURT WITHIN FOURTEEN (14) DAYS FROM THE DUE DATE SET FORTH THEREIN UNLESS ADDITIONAL TIME IS SPECIFIED BY THE PUBLIC WORKS MANAGER OR DESIGNEE THEREOF. APPEARANCES SHALL BE CONDUCTED PURSUANT TO § 1-9 OF THIS CODE. SHOULD THE PARTY FAIL TO APPEAR OR REMIT PAYMENT FOR THE ABATEMENT COST WITHIN THE TIME SPECIFIED, JUDGMENT BY DEFAULT SHALL BE ENTERED IN THE AMOUNT OF THE ABATEMENT COST PLUS A PENALTY AMOUNT FOR THE PARTY'S FAILURE TO APPEAR.

(H) ANY AND ALL UNPAID CHARGES FOR ABATEMENT COSTS MAY BE ENFORCED BY THE CITY COURT, INCLUDING DELINQUENT FINES, FEES AND PENALTIES AS PROVIDED BY LAW. ANY JUDGMENT OR CIVIL SANCTION MAY BE COLLECTED AS ANY OTHER CIVIL JUDGMENT, INCLUDING BUT NOT LIMITED TO, RECORDING A LIEN AGAINST THE REAL PROPERTY, LOT OR TRACT OF LAND THAT IS SUBJECT TO THE ABATEMENT COSTS AS SET FORTH HEREIN.

ENFORCEMENT OF THE LIEN MAY INCLUDE SALE OF THE PROPERTY.

(I) All violations under this chapter CONSTITUTE A PUBLIC NUISANCE AND are civil unless otherwise specified, and ~~shall~~ MAY be commenced by delivering a ~~citation~~ NOV to the person responsible for the violation. IN ADDITION TO THE ABOVE, the procedures in § 1-7 of this code ~~shall~~ MAY be utilized for civil violations of this chapter. The fines for civil violations applicable to this chapter shall be established by city council resolution.

**Section 5.** Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney