

Staff Summary Report



Hearing Officer Hearing Date: October 20, 2009

Agenda Item Number: 13

SUBJECT: This is a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items located at the **RECONSTRUCT COMPANY N.A. PROPERTY** located at 1329 East McNair Drive.

DOCUMENT NAME: 20091020ssl09

PLANNED 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 **RECONSTRUCT COMPANY N.A. PROPERTY (PL090363/ABT09028)** (Reconstruct Company N.A., property owner) Complaint 093559 located at 1329 East McNair Drive in the R1-7, Single Family Residential District.

PREPARED BY: Sherri Lesser, Senior Planner (480-350-8486)

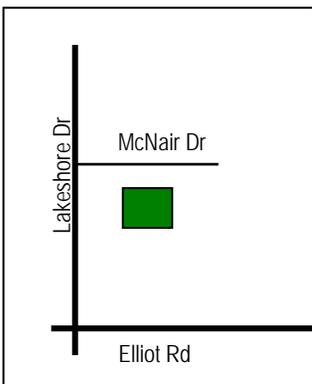
REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) *SEA*

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 **RECONSTRUCT COMPANY N.A. PROPERTY (PL090363/ABT09028)** (Reconstruct Company N.A., property owner) Complaint 093559 located at 1329 East McNair Drive in the R1-7, Single Family Residential District. The details of this case represent several months of correspondence for compliance with the property owner. Staff recommends the authorization of abatement of this property.



PAGES:

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

ATTACHMENTS:

1. Location Map
2. Aerial Photo
- 3-21. Neighborhood Enhancement Report

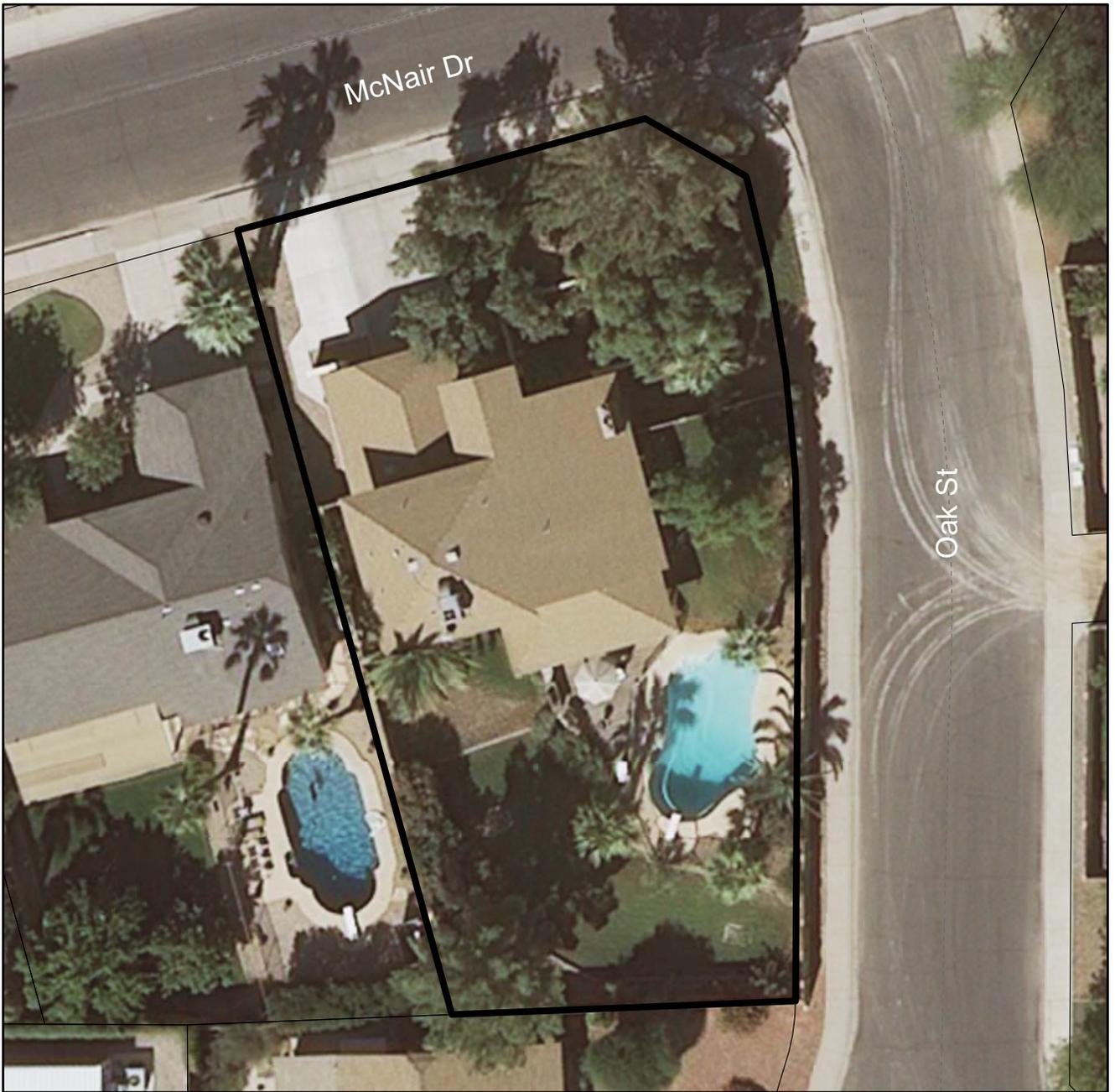
COMMENTS:

The Neighborhood Enhancement Division is seeking approval of a request to authorize the abatement of the **RECONSTRUCT COMPANY N.A. PROPERTY (PL090363/ABT09028)** (Reconstruct Company N.A., property owner) Complaint 093559 located at 1329 East McNair Drive in the R1-7, 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 Don Alexander, Neighborhood Enhancement Inspector, for the history and facts on the enforcement of the property.

Staff recommends the authorization of abatement of this property.

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

DESCRIPTION: Owner – Reconstruct Company N.A.
Applicant – Don Alexander, COT Neighborhood Enhancement
Existing zoning – R1-7, Single Family Residential District



RECONSTRUCT COMPANY N.A. PROPERTY (PL090363)

DATE: 9/16/09
TO: Michael Spencer, Senior Code Inspector
FROM: Donald Alexander
SUBJECT: Request to Abate Nuisance Violations – Reference Complaint #CE093559

LOCATION: 1329 E. McNair Drive, Tempe, AZ 85283
LEGAL: Parcel 301-92-433, as recorded with the Maricopa County Assessor
OWNER: Recontrust Company N.A.

FINDINGS:

5/29/09 The Neighborhood Enhancement Division received a complaint on the above property concerning the green swimming pool.

5/30/09 The property was inspected and found to have a swimming pool with green water. The front and eastside lawns had overheight grass and weeds. A notice to comply was sent to the property owner.

7/1/09 The property was reinspected with no change in its condition. A notice to comply was sent to the property owner.

7/16/09 The property was reinspected with no change in the condition to the green pool, the grass and weeds have been removed. A notice to comply was sent to the property owner.

8/15/09 The property was found to be in foreclosure. A notice to comply was sent to the new property owner.

8/28/09 The property was reinspected with no change in the condition to the green pool. A final notice to comply was sent to the property owner.

9/11/09 The property was inspected with no change in its condition. The Neighborhood Enhancement Division filed for an Abatement Hearing.

9/17/09 A notice to abate was mailed to the property owner and posted to the property.

RECOMMENDATIONS:

I recommend the approval for abatement at 1329 E. McNair Dr., which is owned by Recontrust Company. Recontrust Company has made no attempt to bring the property into compliance and has shown no indication of doing so.

Respectfully submitted,
Donald Alexander

ACTION TAKEN: Referred to Hearing Officer

NAME: Michael Spencer

DATE: 9/16/09

JACK HARRINGTON
3831 W AVALON
PHOENIX, AZ. 85019
TEL: (602) 446-2630
FAX: (602) 347-5487
EMAIL: JACKHBOARDUPS@YAHOO.COM

THE FOLLOWING DOCUMENT IS FOR:

NAME: Don Alexander
FIRM: CITY OF TEMPE CODE COMPLIANCE

DATE: 9-16-09 TIME: 11:30 A.M. _____ P.M.

PROPOSAL

WE PROPOSE TO DO THE FOLLOWING WORK FOR THE CITY OF TEMPE
UNDER CONTRACT # TO8-092-02

ADDRESS: 1329 E. McNAIR DR. TEMPE, AZ.

CLEAN OUT & PUMP POOL

1. PUMP POOL	\$125.00
2. CLEAN POOL OF DEBRIS	<u>\$120.00</u>
TOTAL	\$245.00

THANK YOU

ACCEPTANCE

JACK HARRINGTON



City of Tempe
P. O. Box 5002
Tempe, AZ 85280
www.tempe.gov
(480) 350-8372
(480) 858-2278 (fax)

Neighborhood Enhancement Division

NOTICE OF INTENT TO ABATE PUBLIC NUISANCE

DATE: 9/17/2009

TO: RECONTRUST COMPANY, N.A.
2380 PERFORMANCE DR, TX2-985-07-03
RICHARDSON, TX 75082

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

LEGAL: Parcel 301-92-433, as recorded with the Maricopa County Assessor.

LOCATION: 1329 E McNair Drive, Tempe, Arizona 85283

This office will submit this complaint to the Development Services Abatement Hearing Officer to be placed on the Hearing Officer agenda of October 20, 2009. We are requesting Hearing Officer Authorization to abate this public nuisance in accordance with Section 21-53 of the Tempe City Code by removal of:

Removing green water from pool or restoring water to clear, clean and safe condition. TCC 21-3.b.16 prohibits any swimming pool, architectural pool or spa that creates a health hazard, harbors insect infestation or presents a deteriorated appearance.

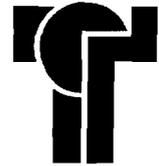
As owner of the property, you have 30 days after receipt of this letter to abate or correct the violation. If the violations have not been corrected within this time period, our office will proceed with the abatement process. The necessary work will be performed at the expense of the property owner. The cost of this work will be \$ 245.00. 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: DONALD ALEXANDER

Phone Number: 480-350-8077

CASE # CE093559



CODE INSPECTOR DONALD ALEXANDER
480-350-8077

E-MAIL: donald_alexander@tempe.gov

Date Mailed: 8/28/09

RECONTRUST COMPANY, N.A.
2380 PERFORMANCE DR, TX2-985-07-03
RICHARDSON, TX 75082

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 8/28/09, 1329 E MCNAIR DR TEMPE AZ 85283 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 9/10/09 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).

- (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:

21-3-(b) (16) : Any swimming pools areas that are not enclosed by a fence of at least five (5) feet in height and equipped with a self-closing and self-latching latch 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.

Please take the following corrective action

Required Correction(s):

- PLEASE REMOVE THE GREEN ALGAE LOCATED WITHIN THE REAR YARD POOL TO AVOID A \$350.00 TICKET.

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 \$150 dollars per violation, 2nd occurrence \$250 dollars per violation, 3rd occurrence \$350 dollars per violation.

Section 21-3, Enumerated Violations subsections (b) 9-16: 1st occurrence \$350 dollars per violation, 2nd occurrence \$650 dollars per violation, 3rd occurrence \$950 dollars per violation.

Habitual Offender 21-4(b) 1st occurrence \$500 dollars + sum of other fines, 2nd occurrence \$1000 dollars + sum of other fines, 3rd occurrence \$1,500 dollars + sum of other fines.

Sec. 21-43. Notice to comply.

(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;
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- (3) Initiate abatement action or criminal proceedings against the responsible party.

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 # CE093559



CODE INSPECTOR DONALD ALEXANDER
480-350-8077
E-MAIL: donald_alexander@tempe.gov
Date Mailed: 8/28/09

**MORTGAGE ELECTRONIC REGISTRATION
400 COUNTRYWIDE WAYSV-35
SIMI VALLEY, CA 93065
NOTICE TO COMPLY**

**City of Tempe Code Compliance Division
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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 # CE093559



CODE INSPECTOR DONALD ALEXANDER
480-350-8077
E-MAIL: donald_alexander@tempe.gov
Date Mailed: 8/15/09

**MORTGAGE ELECTRONIC REGISTRATION
400 COUNTRYWIDE WAYSV-35
SIMI VALLEY, CA 93065
NOTICE TO COMPLY**

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

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.

21-3-(b) (16) : Any swimming pools areas that are not enclosed by a fence of at least five (5) feet in height and equipped with a self-closing and self-latching latch 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.

Please take the following corrective action

Required Correction(s):

- **PLEASE REMOVE THE OVERHEIGHT GRASSES WITHIN THE FRONT/EASTSIDE LAWNS AND COMPLETELY REMOVE THE WEEDS/GRASSES/DEAD PLANTS FROM THE GRAVLED EASTSIDE YARD AREA (ALONG THE EASTSIDE BLOCK WALL) TO AVOID A \$150.00 TICKET.**
- **PLEASE REMOVE THE GREEN ALGAE LOCATED WITHIN THE REAR YARD POOL TO AVOID A \$350.00 TICKET.**

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

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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

CASE # CE093559



CODE INSPECTOR DONALD ALEXANDER
480-350-8077

E-MAIL: donald_alexander@tempe.gov

Date Mailed: 8/15/09

RECONTRUST COMPANY, N.A.
2380 PERFORMANCE DR, TX2-985-07-03
RICHARDSON, TX 75082

NOTICE TO COMPLY

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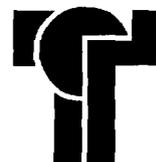
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CE21-1 07/18

CASE # CE093559



CASE # CE093559



CODE INSPECTOR DONALD ALEXANDER
480-350-8077
E-MAIL: donald_alexander@tempe.gov
Date Mailed: 7/16/09

MARC TUBBS
4660 E REINS RD
GILBERT, AZ 85297
FINAL 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 7/16/09, 1329 E MCNAIR DR TEMPE AZ 85283 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 8/6/099 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).

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CASE # CE093559



CODE INSPECTOR DONALD ALEXANDER
480-350-8077
E-MAIL: donald_alexander@tempe.gov
Date Mailed: 7/1/09

MARC TUBBS
4660 E REINS RD
GILBERT, AZ 85297
FINAL 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 7/1/09, 1329 E MCNAIR DR TEMPE AZ 85283 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 7/14/09 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).

- (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:

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.

21-3-(b) (16) : Any swimming pools areas that are not enclosed by a fence of at least five (5) feet in height and equipped with a self-closing and self-latching latch 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.

Please take the following corrective action

Required Correction(s):

- PLEASE REMOVE THE OVERHEIGHT GRASSES WITHIN THE FRONT/EASTSIDE LAWNS AND COMPLETELY REMOVE THE WEEDS/GRASSES/DEAD PLANTS FROM THE GRAVLED EASTSIDE YARD AREA (ALONG THE EASTSIDE BLOCK WALL) TO AVOID A \$150.00 TICKET.
- PLEASE REMOVE THE GREEN ALGAE LOCATED WITHIN THE REAR YARD POOL TO AVOID A \$350.00 TICKET.

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 \$150 dollars per violation, 2nd occurrence \$250 dollars per violation, 3rd occurrence \$350 dollars per violation.

Section 21-3, Enumerated Violations subsections (b) 9-16: 1st occurrence \$350 dollars per violation, 2nd occurrence \$650 dollars per violation, 3rd occurrence \$950 dollars per violation.

Habitual Offender 21-4(b) 1st occurrence \$500 dollars + sum of other fines, 2nd occurrence \$1000 dollars + sum of other fines, 3rd occurrence \$1,500 dollars + sum of other fines.

Sec. 21-43. Notice to comply.

(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:

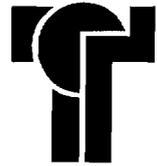
- (1) Initiate court or abatement action without providing written or formal notice to the responsible party;
- (2) Issue a formal notice of violation or civil infraction citation, including notification that the responsible party has been deemed a habitual offender; or
- (3) Initiate abatement action or criminal proceedings against the responsible party.

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 # CE093559



CODE INSPECTOR DONALD ALEXANDER
480-350-8077
E-MAIL: donald_alexander@tempe.gov
Date Mailed: 5/30/09

MARC TUBBS
126 N UNION RD
BUFFALO, NY 14221
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 5/30/09, 1329 E MCNAIR DR TEMPE AZ 85283 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 6/19/09 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).

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

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