

## MARANA RESOLUTION NO. 2021-147

RELATING TO PUBLIC NUISANCE AND PROPERTY PRESERVATION; DECLARING AS A PUBLIC RECORD FILED WITH THE TOWN CLERK MARANA TOWN CODE TITLE 18 (PUBLIC NUISANCE AND PROPERTY PRESERVATION) ADOPTED BY ORDINANCE NO. 2021.025

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, that Marana Town Code Title 18 (Public Nuisance and Property Preservation), a copy of which is attached to and incorporated in this resolution as Exhibit A and one paper copy and one electronic copy of which are on file in the office of the Town Clerk, is hereby declared to be a public record and ordered to remain on file with the Town Clerk.

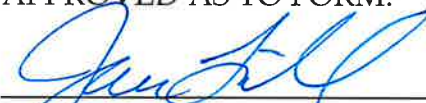
PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, this 16<sup>th</sup> day of November, 2021.

  
\_\_\_\_\_  
Mayor Ed Honea

ATTEST:

  
\_\_\_\_\_  
Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jane Fairall, Town Attorney



**TITLE 18**  
**PUBLIC NUISANCE AND PROPERTY PRESERVATION**

**CHAPTER 18.1.**  
**GENERAL PROVISIONS**

**18-1-1 Purpose and scope**

- A. The purposes of this title are:
1. To promote the health and safety of the citizens of the Town by protecting neighborhoods against public nuisances, and
  2. To protect neighborhoods from Blight through property preservation.
- B. Except as otherwise specifically provided in this title, this title shall apply to all buildings and land within the town.

**18-1-2 Definitions**

A. The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

1. *Abandoned or junked vehicle* means a vehicle that is inoperative, stripped, scrapped, discarded, wrecked, on blocks or similar devices, or is without current license plates, or has deflated or missing tire(s).

2. *Abate* means correct, including, but not limited to, repair, rehabilitate, demolish or remove.

3. *Accessory improvements* means improvements to land other than buildings, including, but not limited to, driveways, parking areas, pools, sidewalks, walkways, bridges, exterior steps, railings, monuments, fences, signs, screening walls and retaining walls.

4. *Attractive nuisance* means a condition, instrumentality, machine or other agency, which is dangerous to children or other individuals because of their inability to appreciate peril and which may reasonably be expected to attract them.

5. *Blight* means unsafe or unsanitary conditions including, but not limited to, the accumulation of litter or debris; buildings, accessory improvements and structures with holes, breaks, rot, crumbling, cracking, or rusting; dead, damaged or uncontrolled plant growth or lack of maintenance; and any other similar condition of neglect, excessive use, decay, degeneration, disrepair, deterioration or infestation that constitutes a fire hazard or may have an adverse effect upon the health and safety of citizens and adjoining properties.

6. *Building* means any structure or part thereof intended to be or actually used by humans or animals for any purpose, including, but not limited to, living, sleeping, eating, cooking, sanitation, medical service, business, government, worship, education, recreation or storage.

7. *Clean fill* means clay, rock, sand or soil which is free of plant growth, debris and litter.

8. *Debris* means junk, including, but not limited to, lumber, furniture, furniture parts, cabinets, refrigerators, stoves, sinks, abandoned or neglected equipment, abandoned or junked vehicles or parts thereof, or the remains of something of little or no apparent economic value.

9. *Designee* means a person appointed in writing by the town manager as authorized to carry out specific actions to enforce this title. The writing shall be filed with the town clerk and shall specify the designee's authority.

10. *Exterior building surfaces* means outside walls, roofs, fixtures and attachments to a building or structure, including, but not limited to, doors, windows, gutters, down spouts, lights, antennas, satellite dishes, porches, posts, railings, garages, eaves, trims, patios and chimneys.

11. *Garbage* means any discarded or spoiled animal or plant matter resulting from the handling, preparation, cooking, or consumption of food; and any other animal or matter subject to rapid decomposition.

12. *Graffiti* means any unauthorized inscription, figure, drawing or other defacement that is written, marked, scratched, drawn, painted or otherwise affixed to any exterior building surface, unscreened area, accessory improvement or vehicle.

13. *Grass* means herbage intended to be or actually used for food, fodder or lawn.

14. *Infestation* means the presence or apparent presence of insects, rodents, birds, animals or other noxious pests of a kind or in a quantity that may have an adverse effect upon a building or structure or upon the health and safety of citizens.

15. *Land* means all land in the town and all buildings, structures and accessory improvements located thereon.

16. *Landscaped area* means an exterior improvement or change of land through plant growth or natural or artificial topping material such as rocks or stones, or a combination of plant growth and topping material.

17. *Landscape waste* means any dirt, dust, sand, stones, excavation material, leaves, landscape clippings, severed plant growth or any other material resulting from landscape installation or maintenance.

18. *Leaf blower* means any device that generates a stream of air that is designed or used to move landscape waste or litter.

19. *Litter* means all solid waste including, but not limited to, ashes, street cleanings, severed plant growth, garbage, dead animals, animal feces, abandoned or junked vehicles or

parts thereof, solid commercial and industrial waste, paper, rags, empty barrels, crates, packing cases, boxes, cartons, wood shavings, packing material, wrappings, cigarettes, cardboard, landscape clippings, leaves, metal, mattresses, bedding, crockery, bottles, cans, glass, plaster, plastic, asphalt, tile, rock, bricks, clean fill, fill dirt, excavation material, or other materials tending to create an unsightly condition and having an adverse effect upon the health and safety of citizens.

20. *Major Vehicle Repair* means the removal from any vehicle of a major portion thereof including, but not limited to, the differential, transmission, head, engine block, or oil pan.

21. *Natural desert* means undisturbed, unimproved land with undisturbed native vegetation.

22. *Plant growth* means vegetation, whether living or dead, including, but not limited to, grass, flowers, weeds, vines, bushes, shrubs, cacti or trees.

23. *Pool* means a constructed or excavated exterior area designed to contain a regular supply of water, including, but not limited to, a swimming pool, spa, waterfall, pond or other body of water.

24. *Public place* means any town-owned street, sidewalk, alley, easement or other public way, and any public park, square, space, land or building.

25. *Public roadway* means that part of the street used or intended for use by the general public for motor vehicles.

26. *Regularly used in the commission of a crime* means one or more law enforcement agencies have documented three or more complaints alleging criminal activity in three or fewer consecutive months at the address or location of the building or land.

27. *Street* means the full right-of-way used by the general public for road, highway, alley, pedestrian walkway or bikeway purposes, whether or not improved or accepted for maintenance by the town.

28. *Structure* means any item constructed or erected, the use of which requires a location on the ground or attached to something having a location on the ground, but not including a vehicle.

29. *Unscreened* means visible from a place reasonably accessible to the general public or to a person standing on adjacent land.

30. *Vacant lot* means land that has been or has not been disturbed and/or was previously developed, and may contain structures but does not contain buildings.

31. *Vehicle* means any device in, upon or by which a person or property is or may be transported or drawn on a street, including, but not limited to, an off-road vehicle, an all-terrain vehicle, a dirt bike, a buggy, a trailer, an aircraft of any kind and a device used exclusively on rails or tracks.

32. *Watercraft* means any device specifically designed for use on water, including, but not limited to, a boat, canoe, jet ski or pontoon.

33. *Weed* means any uncultivated plant growth, including, but not limited to, bull thistle, cocklebur, foxtail, horseweed, lambs quarters, London rocket, mallow, milkweed, pigweed, mustards, prickly lettuce, ragweed, Russian thistle, tumbleweed, shepherds purse, sowthistle, white horenettle, willow weed, and plant growth defined as noxious weeds in state statutes regardless of whether an owner or occupant regards the plant growth as desirable.

### **18-1-3 Conflicts and interpretation**

A. Where a provision of this chapter is in conflict with a provision of any other title of the Town Code existing on the effective date of this title, the provision which establishes the higher standard for the protection of the public health and safety shall prevail.

B. Where two or more provisions of this chapter are in conflict, the provision which establishes the higher standard for the protection of the public health and safety shall prevail.

C. The town manager or designee may render interpretations of this title and adopt regulations to clarify its provisions. Each interpretation shall be posted on the town's web site.

### **18-1-4 Severability**

The provisions of this title are severable. If any section, subsection, sentence or phrase of this title is declared invalid, that declaration shall not affect the remaining provisions of this title.

## **CHAPTER 18-2. PUBLIC NUISANCES**

### **18-2-1 Public nuisances**

A. Except as otherwise permitted by law, each of the following conditions is a public nuisance on any land or in any building in the town and is unlawful, when the condition is or may be detrimental to the life, health or safety of individuals or the public:

1. Animal manure that is neither used for fertilizing lawns or gardens nor securely protected from insects and the elements.

2. Putrid, unsound or unwholesome bones, meat, hides, skins, or other animal parts; dead animals, fish or fowl; butcher's trimmings and offal; waste vegetation; liquid waste; animal matter, garbage, human or animal excreta, sewage and other similar offensive substances.

3. A dumping ground or other land or building used for depositing litter or debris, or wrecking, disassembling, rebuilding, repair, storage or accumulation of three or more

vehicles, or of machinery, or parts of vehicles or machinery.

4. Noxious exhalations and other airborne irritations, including, but not limited to, smoke, soot, dust, fumes or other gases, offensive odors, or other annoyances.

5. Burning litter, debris, sawdust or other material resulting in smoke, gases, ashes, soot, cinders, sawdust or other material being transported to or deposited on land or buildings.

6. Disposing of litter, debris, sawdust or other material in a manner that results in its unauthorized deposit on land or buildings.

7. An unsecured or abandoned excavation, pit, well, other hole or pool.

8. A privy, vault, cesspool, sump, pit, pool, accumulated water or similar condition that is foul, malodorous, or subject to infestation, pollution or stagnation.

9. An unsecured building that is vacant, abandoned, dilapidated, structurally unsound, or partially destroyed for more than 48 consecutive hours.

10. An abandoned, unattended or discarded icebox, refrigerator or other container that has an attached airtight door or lid, snaplock or other locking device that may not be released from the inside.

11. Plant growth or any other condition, sign, structure, vehicle or watercraft that obstructs or interferes with or renders dangerous the use or passage of any public place.

12. Plant growth or any other condition, sign, structure, vehicle or watercraft that obstructs or interferes with sight distance or the visibility of any traffic control device or sign.

13. Plant growth or any other condition that constitutes a fire hazard or encourages infestation or noxious pests.

14. Infestation.

15. A building or land regularly used in the commission of a crime.

16. Blight.

17. Attractive nuisances.

18. Graffiti.

## **CHAPTER 18-3. PROPERTY MAINTENANCE**

### **18-3-1 Litter control**

A. No person shall throw, deposit or dump any litter or debris on any land.

B. A person may store litter and debris in a secure receptacle with a tight lid for collection if the receptacle is maintained so that litter and debris are prevented from being blown or deposited on any public place or adjacent land.

C. Only as permitted by law, a person may store litter and debris within any building.

### **18-3-2 Vehicles and watercraft**

A. An owner and/or occupant of land where an abandoned or junked vehicle, or a vehicle or watercraft being restored or undergoing major repair, is located, shall store the vehicle and watercraft in an enclosed area so that the vehicle and watercraft are not visible from any point outside the land. A vehicle or watercraft cover is not an enclosed area, unless the vehicle or watercraft is fully within a carport.

B. Except as otherwise permitted by law, there shall be no more than two abandoned or junked vehicles on any property.

C. Except as otherwise permitted by law, no person shall display a vehicle or watercraft for sale on land of another or within the right of way.

D. No person shall park a vehicle or watercraft on any street or public place for the principal purpose of washing, greasing or repairing the vehicle or watercraft, except repairs necessitated by an emergency.

### **18-3-3 Buildings, structures and accessory improvements**

A. The owner and/or occupant of a building shall maintain all exterior building surfaces to be free of blight and graffiti.

B. The owner and/or occupant of land where a structure and/or an accessory improvement is located shall maintain the accessory improvement free of blight and graffiti.

### **18-3-4 Land**

A. The owner and/or occupant of land shall maintain the land free of:

1. Blight, garbage, litter or debris;
2. Noxious exhalations and other airborne irritations, including, but not limited to, smoke, soot, dust, fumes or other gases, offensive odors or other annoyances;
3. Plant growth, infestation and any other condition that encourages infestation or otherwise adversely affects the health and safety of individuals or the public.
4. Grass higher than nine inches, poison oak, poison ivy, and weeds; or plant growth that is dead, dry, uncultivated or overgrown.

B. In addition to the requirements of subsection A of this section, the owner and/or occupant of land shall also maintain the following areas free of grass higher than nine inches,

poison oak, poison ivy, weeds, blight, garbage, litter and debris: adjacent rights-of-way from the back of the curb or edge of paving in the street, through the owner's and/or occupant's land, to the centerline of any adjacent alley or right-of-way, if present.

C. In addition to the requirements of subsection B of this section, the owner and/or occupant of a business shall maintain the parking lot, lighting and landscaped areas adjacent to or surrounding the business in good repair and free of grass higher than nine inches, weeds, garbage, litter and debris.

D. The owner and/or occupant of a business that sells or accepts soil, vegetation, landscape material, trash, recycling or any similar commodity shall maintain the property entry, exits and adjoining right of way free from debris, deposits, pollutants and safety hazards.

E. The owner and/or occupant of land that has been subject to dumping on more than one occasion shall take measures to secure the land to prevent future dumping. The measures may include erecting a fence, constructing a ditch and berm, or placing four-foot high posts at four-foot intervals. Any measures under this subsection shall be taken only in conformance with required permits.

F. Except as otherwise permitted by law and by the landowner in writing, no person shall place clean fill or fill dirt on land of another.

G. The owner and/or occupant of land where a pool is located shall maintain the pool to avoid health or safety hazards, infestation, pollution, stagnation and blight.

H. Agricultural activities regulated by state law are excluded from this section.

### **18-3-5 Blowing landscape waste**

Use of a leaf blower shall be limited to blowing landscape waste on the user's property and shall not result in landscape waste being blown into the public roadway or another's property.

### **18-3-6 Preservation of natural desert**

A. The purpose of this section is to recognize that preservation of the unique natural desert in limited areas of the town promotes the health and safety of the citizens of the town.

B. Except for a condition that is a public nuisance as set forth in section 18-2-1, the property maintenance standards that require the owner and/or occupant of land to maintain the land free of the plant growth set forth in subsections 18-3-4 A.4 and B shall not apply to:

1. Natural desert within public places.
2. Natural desert within natural area open space as established in conformance with the town Land Development Code.



3. Natural desert areas within state-owned land.
4. Natural desert that has never been graded or disturbed.

### **18-3-7 Dilapidated buildings prohibited**

Each owner, lessee, tenant, resident or occupant shall maintain a property so that it is free of dilapidated buildings. Dilapidated building means any real property structure that is likely to burn or collapse and its condition endangers the life, health, safety or property of the public, and includes, but is not limited to, a building that is abandoned, inadequately maintained, in disrepair, neglected, vandalized, constructed in a faulty manner, not of sufficient strength or stability, not anchored, attached or fastened in place to an adequate supporting foundation, unsecured or in a state of deterioration.

## **CHAPTER 18-4. ADDITIONAL VIOLATIONS**

### **18-4-1 Additional violations**

- A. No person shall create, maintain or permit a public nuisance as defined in section 18-2-1 above.
- B. No person shall create, maintain, permit or assist any violation of this title, or fail to perform any act or duty required by this title.
- C. No person shall interfere or attempt to interfere with a town agent investigating or abating a violation of this title.
- D. No person shall knowingly make a false statement or knowingly mislead a town agent investigating or abating a violation of this title.
- E. No person shall place any personal property, materials, goods, wares, merchandise or similar items of any kind in or upon any public street, sidewalk, alleyway or right-of-way. Items placed by or approved by the Town are exempt from this subsection, including:
  1. Portable basketball hoops, goalie nets, and similar items, during the actual time they are in use within residential areas.
  2. Trash and recycling receptacles properly placed for collection in the following manner:
    - a. Where curbing exists, containers shall be placed on the street with the wheels against the curb.
    - b. In all other locations, containers shall be placed within two feet of the street in a manner that does not obstruct or otherwise impede access to any sidewalk.

**18-4-2 Barbed wire, razor wire, razor ribbon, concertina wire, electrified fencing or similar features prohibited; exceptions**

A. The use as a fence or wall, either in whole or part, of barbed wire, razor wire, razor ribbon, concertina wire, electrified fencing or similar features is prohibited on all residentially zoned land throughout the town.

B. Notwithstanding the provisions of subsection A of this section and unless otherwise prohibited by law, barbed wire and electrified fencing used to control livestock that complies with Arizona Game and Fish Department guidelines for Wildlife Compatible Fencing that does not exceed Town of Marana fencing height standards is permitted within any residential district that meets the criteria established for the keeping of livestock.

C. For the purposes of this section, livestock has the same meaning as defined in A.R.S. § 3-1201.

**18-4-3 Each day separate violation**

Each day any violation of any provision of this title or the failure to perform any act or duty required by this title continues shall constitute a separate offense.

**CHAPTER 18-5.  
ENFORCEMENT**

**18-5-1 Authority**

The town manager or designee, town attorney, code enforcement officers and Marana police officers shall enforce this title.

**18-5-2 Presumptions**

A. The owner of land, as recorded in the Pima County Recorder's Office, is presumed to have control over the land and buildings and accessory improvements on the land. If more than one person is recorded as the owner of land, all persons on record are presumed to have joint and separable control over the land and buildings and accessory improvements on the land. The occupant residing or operating a business on land or in a building is presumed to have control over the building and land on which it is located. These presumptions shall not prevent the enforcement of this chapter against persons other than

record owners, to include lessees, tenants and occupants.

B. Under the state statutes regarding criminal nuisance, the owner, leaseholder or person with legal privilege to control land, shall be deemed to have notice of the criminal nuisance as set forth in the state statutes.

C. All presumptions are rebuttable.

### **18-5-3 Enforcement options**

A. The town, its officers and employees may enforce this title by one or more lawful means, including but not limited to, voluntary compliance, administrative and civil consent orders, civil enforcement, including injunctive action, criminal enforcement and abatement by administrative procedure, emergency abatement and abatement regarding criminal activity. The town may also require restitution and additional fees. The town may immediately remove any hazardous item, structure or sign from any street or public place. One type of enforcement neither limits nor precludes the town from pursuing any other type of enforcement.

B. A violation of this title is in addition to any other violation of the Town Code. Enforcement of a violation of this title in no way limits enforcement of any other violation of the Town Code or of state statutes.

### **18-5-4 Misdemeanor violations**

Notwithstanding the provisions of section 18-5-3, a violation of this title may only be deemed a class one misdemeanor if the violation is:

A. The second or subsequent public nuisance as defined in section 18-2-1, or

B. The second or subsequent violation of any other section within two years of the first violation.

### **18-5-5 Inspections**

A. The town manager or designee, code enforcement officers or Marana police officers may inspect buildings or land to determine compliance with this title.

B. Building exteriors and unscreened land may be inspected at any time with or without the presence of the owner or occupant in conformance with legal requirements governing administrative inspections of buildings and land.

C. Except in a situation presenting an imminent hazard to life, health or public safety, building interiors and screened land shall be inspected during the normal business hours of the town, unless otherwise arranged, upon:

1. The owner's or occupant's consent, or
2. Any administrative or court order.

### **18-5-6 Voluntary compliance**

The town manager or designee, code enforcement officers or Marana police officers may seek voluntary compliance with this title through warnings, notices, compliance orders, or other means to achieve efficient and effective compliance.

### **18-5-7 Corrective Action Plans**

The town may enter into a written corrective action plan, signed by the town manager or a code supervisor, with a person accused of violating this title. The corrective action plan may be enforced as a contract is enforced or by any other lawful means, including the issuance of a citation at the expiration of the time given in the plan.

### **18-5-8 Civil complaints**

A. The town manager or designee, code enforcement officers, the town attorney and Marana police officers may bring civil complaints under this title.

B. The complaint shall include a written description and statutory designation of the violation(s).

C. The town shall attempt to hand deliver the civil citation to the person accused of violating this Code. If the town is unable to hand deliver the civil citation, the town may serve it by certified or registered mail, return receipt requested, or by any means allowed by the Arizona Rules of Civil Procedure, to include alternative service methods approved by the court. If the town sends a citation via certified or registered mail, an additional copy must also be sent by regular mail.

D. The citation is deemed served on the date it is hand delivered or, if mailed, on the date of signature on the return receipt.

### **18-5-9 Civil complaints; court appearance or failure to appear**

A. On the date specified in the complaint, the defendant shall appear in municipal court in person or through an attorney. The defendant shall admit or deny the allegations in the complaint. If the defendant admits the allegations, the court shall enter judgement against the defendant and impose the civil penalties set forth in section 18-5-14 below, and require additional fees pursuant to 18-5-16 below. If the defendant denies the allegations, the court shall set the matter for hearing.

B. If a defendant served with a complaint fails to appear on the date specified in the complaint, or fails to appear at the hearing set by the court, the allegations in the complaint are deemed admitted. The court shall enter judgement against the defendant and impose the civil penalties set forth in section 18-5-14 below, and require additional fees pursuant to 18-5-16 below.

### **18-5-10 Authority to issue criminal complaints**

A Marana police officer may issue a criminal citation or the town attorney may bring criminal complaints under this title.

### **18-5-11 Jurisdiction and procedure of municipal court**

A. The municipal court has jurisdiction over all civil complaints, town petitions for abatements including emergency abatements and all criminal citations to enforce this title.

B. The municipal court shall follow the Arizona Rules of Court for Civil Traffic Violation Cases for civil complaints to enforce this title, except as modified or where inconsistent with this title, local rules of the court, or rules of the Arizona Supreme Court.

C. The municipal court shall follow the Arizona Rules of Criminal Procedure for criminal actions to enforce this title.

D. The municipal court may order abatements to enforce this title either upon petition from the town attorney or incidental to a hearing on a civil or criminal violation of this title when requested by the town.

### **18-5-12 Procedure for abatement petitions filed in municipal court**

A. After notice to the owner and any responsible party, the judge shall conduct a hearing. Both the town and defendant(s) shall have an opportunity to be heard and present evidence. The rules of evidence shall not apply to these hearings but the judge may make rulings on the conduct of these hearings to ensure that they proceed in an orderly and efficient manner. The judge shall determine whether a violation of this title exists and order an abatement of the violation as appropriate in accordance with subsection B of this section. The court's determination shall be based on a preponderance of the evidence. If a defendant fails to appear for a hearing, the court shall hold the hearing in the defendant's absence. If the town fails to appear for a hearing, the court shall dismiss the petition without prejudice.

B. Upon finding that abatement is appropriate, the court may order demolition, board-up, cleanup, inspection or any other action the court deems reasonably necessary to abate the violation.

C. Demolition of a structure shall only be ordered following issuance of notice as required by subsection A of this section to the owner and any responsible parties with an interest in the property that is recorded in the office of the county recorder and in accordance with this title. Notice to the interested parties may be recorded against the property.

D. The reasonable costs of any abatement permitted by the court's order shall be the responsibility of the owner and may be assessed and recorded as provided in sections 18-5-21 and 18-5-22.

E. The notice required in subsection A shall generally comply with Rule 4 of the Arizona Rules of Civil Procedure, except that upon petition by the town attorney the court may, upon a finding of good cause, deem the notice requirement satisfied by notice being posted in a conspicuous location on the subject property.

F. The provisions of chapter 18-6 of this title do not apply to abatements brought under this section.

#### **18-5-13 Procedure for emergency abatement petitions filed in municipal court**

A. If a violation of this title presents an imminent hazard to life, health or public safety, the court may immediately consider and grant emergency abatement orders brought on behalf of the town by the town attorney.

B. Notice of the abatement petition and order shall be posted on the property in accordance with subsection 18-5-23 B.3.

C. The provisions of chapter 18-6 of this title and subsection 18-5-23 E do not apply to abatements brought under this section.

#### **18-5-14 Civil penalties**

A. The civil penalty may be determined by the court, by plea agreement, or by stipulation. The court shall also impose all other fees and surcharges applicable under state statutes and Title 5 and 18 of the Town Code, including section 18-5-16.

B. On proper evidence that the violation(s) has been corrected and the defendant is in compliance with this title at the time of the hearing, the penalties may be reduced.

#### **18-5-15 Criminal penalties**

A. The criminal penalty may be determined by the court, by plea agreement, or by stipulation. The court shall also impose all other fees and surcharges applicable under state statutes and Title 5 and 18 of the Town Code, including section 18-5-16.

B. On proper evidence that the violation(s) has been corrected and the defendant is in compliance with this title at the time of the hearing, the penalties may be reduced.

#### **18-5-16 Additional fees**

In addition to the penalties of sections 18-5-14 and 18-5-15, the court shall, as part of its sentence, impose all costs of abatement to compensate the town for its costs to bring a building or land into compliance with this title. Additionally, the court may impose inspection costs, court costs and prosecution costs.

#### **18-5-17 Notice to abate**

- A. If, after an inspection, the town finds one or more violations of this title, the town may require correction of the violation(s). If the town requires correction, the town may issue a notice to abate to the owner, the owner's authorized agent or the owner's statutory agent, and the occupant or lessee.
- B. The notice to abate shall be in writing and shall set forth:
1. The identification of the land where the violation is located, by legal description, including the street address, if known, or by book, map and parcel number, if the street address is unknown.
  2. A statement of the violation(s) in sufficient detail to allow a reasonable person to identify and correct the violation(s).
  3. The date by which the owner, the owner's authorized agent, the owner's statutory agent, the occupant or lessee shall correct the violation, which date shall not be less than 30 days from service of the notice.
  4. The name and phone number of the inspector who sent the notice.
  5. The estimated cost of abatement to the town.
  6. If the violation(s) is not corrected by the date specified for abatement, the town may abate the violation(s), assess the owner, occupant and/or the lessee the cost of abatement, and record a lien on the land for the assessment.
  7. The appeal procedures, if any.

#### **18-5-18 Service of notice to abate**

A notice to abate shall be served by any of the following methods:

- A. By hand delivering a copy of the notice to abate to the owner, the owner's authorized agent or the owner's statutory agent, and the occupant or lessee.
- B. By mailing a copy of the notice to abate, by certified mail, to the owner, the owner's authorized agent or the owner's statutory agent, and the occupant or lessee at the last known address and at the address to which the tax bill for the land was last mailed.
- C. The notice to abate is deemed served on the date it is hand delivered or, if mailed, on the date it is deposited in the United States mail.

#### **18-5-19 Effect of notice to abate**

- A. A notice to abate is effective upon any person served in conformance with section 18-5-18 or section 18-5-23 and any person with actual notice.
- B. A notice to abate runs with the land.
- C. The town may record a notice to abate in the Pima County Recorder's Office.

#### **18-5-20 Town may abate**

If the owner, occupant or lessee subject to the notice to abate fails to correct the violation(s), the town may:

- A. Abate the violation(s),
- B. Assess the owner, occupant and/or the lessee the cost of abatement, and
- C. Record a lien on the land for the assessment.

**18-5-21 Town assessment for abatement**

- A. Following abatement, the town shall prepare a statement of the cost of abating the violation of this chapter.
- B. The statement shall be mailed to the owner, the owner's statutory agent, the occupant and lessee at the address used to serve the notice to abate.
- C. The statement shall set forth:
  - 1. The statement of cost is an assessment upon the land from which the town abated the violation.
  - 2. The payment of the statement of cost shall be made by the date specified in the statement of cost.
  - 3. If payment is not made by the date specified in the statement of cost, the town shall place a lien on the land in the amount of the statement.
  - 4. The appeal procedures, if any.

**18-5-22 Assessment lien**

- A. The town's statement of cost under section 18-5-21 above shall be:
  - 1. An assessment on the land from which the town abated the violation(s), and
  - 2. Collected at the same time and in the same manner as other town assessments are collected.
- B. The town shall record the assessment in the Pima County Recorder's Office. From the date of its recording, the assessment shall be a lien on the land.
- C. The lien shall be inferior only to general tax liens.
- D. After recording the lien, the town may institute an action to enforce the lien in the Superior Court for Pima County. The recorded assessment is prima facie evidence of the truth of all matters recited in the assessment and the regularity of all proceedings before the recordation. Upon judgement of foreclosure and order of sale, the town shall sell the land to satisfy the lien.
- E. A prior assessment under this section is not a bar to a later assessment. Any number of liens on the same land may be enforced in the same action.



F. Failure to enforce the lien shall not affect its validity.

### **18-5-23 Emergency abatement**

A. If a violation of this title presents an imminent hazard to life, health or public safety, the town may notify the owner, the owner's authorized agent, the owner's statutory agent, occupant or person responsible for the violation to correct the violation immediately or the town may abate the violation.

B. A notice for emergency abatement may be written, oral or electronic. A written notice shall be served by any of the following methods:

1. By hand delivering a copy of the notice to the owner, the owner's authorized agent, the owner's statutory agent, occupant, lessee and/or person responsible for the violation, or

2. By mailing a copy of the notice to the owner, the owner's authorized agent, the owner's statutory agent, occupant, lessee and/or person responsible for the violation at the last known address, or

3. By prominently posting a copy of the notice on the building, accessory improvement, land or vehicle in violation.

C. Written notice is deemed served on the date it is hand delivered, or if mailed, on the date it is deposited in the United States mail, or the date it is posted.

D. Whether or not notice is served, the town may abate the violation.

E. Upon request, the owner, the owner's authorized agent, the owner's statutory agent, occupant, lessee or person responsible for a violation that presents an imminent hazard to life, health or public safety, shall be granted a hearing before the board of adjustment appointed pursuant to chapter 18-6 of this title, but the appeal shall not stay the town's abatement of the violation.

F. The effect of a notice for emergency abatement under this section shall be as set forth for a notice of abate in section 18-5-19 above.

G. The town may assess the owner, occupant or person responsible for a violation for the cost of any emergency abatement by any means authorized by law.

### **18-5-24 Notice to abate; abatement regarding criminal activity**

A. If the town finds that a building or land is regularly used in the commission of a crime, the town shall issue a notice to abate to the owner, the owner's managing agent, the occupant and any other person responsible for the use of the building or land for criminal activity.

B. The notice to abate shall be in substantial conformance with the state statutes. The notice to abate may contain the date by which the owner, the owner's managing agent, the occupant, and other person responsible for the use of the building or land for criminal activity, shall correct the violation, which date shall not be less than 30 days from the service of the notice.

- C The service of the notice to abate shall be in conformance with the state statutes.
- D The notice to abate is deemed served on the date it is hand delivered or, if mailed, on the date it is deposited in the United States mail.

**18-5-25 Town may abate or bring action; abatement regarding criminal activity**

- A If the owner, the owner's managing agent or any other person responsible for the use of the building or land for criminal activity fails to correct the nuisance, the town may:
  - 1 Abate the use of the building or land for criminal activity.
  - 2 Bring an action in Superior Court to abate the use of the building or land for criminal activity.
- B If the court enters a temporary restraining order, the town shall serve upon the defendant(s), any applicable statutory agent, and any legal occupant the town believes may claim an interest in the building or land:
  - 1 Notice of the entry of the temporary restraining order,
  - 2 Copies of the temporary restraining order and the complaint, and
  - 3 Notice of the possibility for a hearing, which shall be in substantial conformance with the state statutes.
- C The service of the documents set forth in subsection B of this section shall be in conformance with state statutes.

**18-5-26 Town recordation of action**

- A If the town brings an action to abate the use of a building or land for criminal activity, the town shall file a notice of the action in the Pima County Recorder's Office.
- B The notice shall be in conformance with state statutes.

**18-5-27 Assessment for abatement regarding criminal activity**

- A The court may assess the owner for the cost of abating the nuisance.
- B The town shall record the assessment in the Pima County Recorder's Office. From the date of its recording, the assessment shall be a lien on the land.
- C The lien shall be inferior only to general tax liens, child support liens, restitution liens and prior recorded mortgages.
- D The town may enforce the lien as set forth in subsections D, E, and F of section 18-5-22.

**18-5-28 Declaration of structure unfit for human habitation**

If a structure presents an imminent hazard to life, health or public safety, the town may declare the structure unfit for human habitation, and order it to be vacated.

## **CHAPTER 18-6.**

### **APPEALS**

#### **18-6-1 Board of adjustment; authority and filing**

- A. The board of adjustment shall hear and decide:
1. Appeals to an interpretation of this title by the town manager or designee and posted on the town's web site.
  2. Appeals to a notice of an administrative abatement, a notice to vacate or an assessment.
- B. A request for a time extension or an appeal shall be in writing and shall be filed with the town clerk within ten days of the date of, as applicable:
1. The interpretation's posting on the town's web site, or
  2. The notice to abate, the notice to vacate, or the assessment.
- C. If a person fails to request a time extension or appeal within ten days, the failure constitutes:
1. A waiver of the right to a hearing, and
  2. An admission of the validity of the notice or assessment.
- D. The request for a time extension shall specify what time extension is necessary and reasonable.
- E. The appeal shall specify why:
1. The land or building subject to the notice is not in violation of this chapter;
  2. The interpretation is incorrect; or
  3. The assessment is excessive.
- F. A fee of \$25.00 dollars shall accompany the request or appeal. In case of financial hardship, the fee may be suspended until the board of adjustment renders the decision. The board of adjustment may waive the fee upon a finding of financial hardship.

#### **18-6-2 Hearing procedure**

- A. The board of adjustment shall set a date for hearing on the request or appeal within 15 days of the town clerk's receipt of the request or appeal.
- B. The hearing shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for the

statutory provisions relating to privileged communications. The board of adjustment may make orders to fairly and efficiently determine the truth and decide the case. The burden of proof at the hearing shall be on the town by a preponderance of the evidence.

C. The board of adjustment shall:

1. Render a decision within 15 days of the hearing.

2. Prepare findings and a decision.

3. Mail the findings and decision to all the parties to the request or appeal, by certified mail unless at the conclusion of the hearing a decision is rendered and communicated to the parties.

D. Rule 7 of the Arizona Rules of Procedure in civil traffic violation cases shall govern requests for recusal of the hearing officer.

E. Rules 12 and 13 of the Arizona Rules of Procedure in civil traffic violation cases shall govern representation by counsel in these proceedings.

#### **18-6-3 Time extensions**

A. The board of adjustment may grant one extension of the time set forth in an administrative notice to abate under this title. The extension shall not exceed 90 days after the date of the hearing.

B. The board of adjustment shall grant an extension only where it finds:

1. A hardship in bringing the land into compliance within the time set forth in the notice to abate; and

2. A reasonable plan by which the land will be brought into compliance within the time extension.

C. The extension granted by the board of adjustment shall run from the date the board of adjustment mails the findings and decision as set forth in section 18-6-2 above.

#### **18-6-4 Appeal from decision of the board of adjustment**

A party aggrieved by the board of adjustment's decision may appeal to Superior Court. An appeal shall be taken within 30 days of the date of the board of adjustment's decision or shall be waived.