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DEC 09 2013

ORDINANCE NO. 4512

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING THE CHANDLER CITY CODE, CHAPTER 30, BY ADOPTING NEW DEFINITIONS IN SECTION 30-2, MODIFYING THE PROVISION FOR A PUBLIC NUISANCE IN SECTION 30-5, AND ADDING PROVISIONS FOR EMERGENCY ABATEMENT AND COURT-ORDERED ABATEMENT IN SECTION 30-6.

BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

SECTION 1. AMENDMENT OF CHANDLER CITY CODE.

The Chandler City Code Chapter 30, Section 30-2, is amended as follows: (a) Section 30-2 is hereby amended to adopt and/or modify definitions for *Abate*, *Blight or blighted*, *Inoperable vehicle*, *Minor vehicle repair* and *Weeds* to read as follows:

***Abate.* To correct, including but not limited to repair, clear, demolish or remove.**

Blight or blighted. Unsightly conditions including accumulation of debris; fences characterized by holes, breaks, rot, crumbling, cracking, peeling or rusting; landscaping that is dead, characterized by **bare dirt areas,** uncontrolled growth or lack of maintenance, or is damaged; any other similar conditions of disrepair and deterioration; and the exterior visible use or display of tarps, plastic sheeting, or other similar materials as flexible or inflexible screening, fencing, or wall covering upon a residential lot; regardless of the condition of other properties in the neighborhood.

Inoperable vehicle. A vehicle physically incapable of its intended operation or a vehicle that exhibits one (1) or more of the following conditions: wrecked, partially or fully dismantled, abandoned, stripped, substantially damaged, inoperative, scrapped, having the status of a hulk or shell, discarded, or unable to be safely operated; including but not limited to vehicles on blocks or similar devices, with a deflated tire or tires, or from which the engine, wheels or tires have been removed. A vehicle, **for a period of more than ninety (90) days, lacking a valid license plate lawfully affixed thereto or having expired registration tags** ~~for which required license plates and/or tags have been expired or out of date for more than three (3) months in addition to the collection of dust and/or cobwebs is an indication that a vehicle~~ is inoperable.

***Minor Vehicle Repair.* Brake part replacement, minor tune-ups, change of oil and filter, repair of flat tires, lubrication and other similar operations are considered minor vehicle repairs. "Minor Vehicle Repair" does not include any removal or rebuilding of engines, repair or removal of differentials or axles, any body or painting work of vehicles or vehicle parts or any vehicle repair that causes a vehicle to be inoperable for a period in excess of twenty-four (24) hours.**

Weeds. ~~Any vegetation which attains such large or uncontrolled growth as to become, when dry a fire hazard or menace to adjacent property and any vegetation, in excess of six (6) inches, growing in an uncontrolled manner, which will, if not cut or destroyed, become a fire hazard or menace to adjacent property.~~ **In addition to those noxious weeds defined in A.R.S. § 3-201, weeds include, but are 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 horsenettle, and willow weed, regardless of whether an owner or occupant regards the plant growth as desirable. In addition, any vegetation, in excess of six (6) inches, growing in an uncontrolled manner, which will, if not cut or destroyed, become a fire hazard or menace to adjacent property is for the purpose of this chapter a weed.**

SECTION 2. AMENDMENT OF CHANDLER CITY CODE.

The Chandler City Code Chapter 30, Section 30-5, is amended as follows: (a) Subsection 30-5.A.2 is hereby amended to modify the provision of public nuisance for inoperable vehicle; (b) Subsection 30-5.A.3 relating to an affirmative defense is hereby repealed; (c) Section 30-5 subsections are renumbered to reflect adopted amendments. Section 30-5.A.2 is adopted to read as follows:

A. Public nuisance includes, but are not limited to, any one (1) or more of the following conditions:

1. Exterior areas used or maintained as junkyards or dumping grounds, except:

   a. Any automobile wrecking yard or other junkyard where the same are permitted by the City zoning regulations; or

   b. The disassembling, repair, rebuilding, storage or keeping of vehicles, machinery or any of the parts thereof on any farm or ranch where such disassembling, repair, rebuilding, storage or keeping are customary and incidental to such farming or ranching activities.

2. Any inoperable vehicle, or parts thereof, outside of or under a roof area not **completely** enclosed by walls, doors or windows of any building on any lot, except the safe and neat keeping of:

   ~~a. Substantially complete inoperable or unregistered vehicles with inflated tires under the roof area of any building as long as the vehicle is kept covered.~~

~~a~~b. A vehicle undergoing **minor vehicle** repair, **registered** ~~titled~~ to the owner or resident of the property, provided that the ~~repair is complete within fourteen (14) days after the repair was begun,~~ **vehicle under repair is not left unattended on jacks, jack stands, blocks or similar devices.** ~~provided that not more than three (3) such fourteen (14) day repairs will be permitted in any twelve (12) month period.~~

~~b~~c. Not more than two (2) ongoing restoration projects or inoperable or unregistered vehicles in a backyard area, screened by a substantially opaque fence at a minimum height of five (5) feet or the height of the vehicles, whichever is more, provided that any fence constructed or modified pursuant to this subsection must meet any and all other requirements of the City Code.

~~c~~d. Lawful commercial activities involving vehicles as allowed by the zoning ordinance.

~~d~~e. Operable off-road vehicles, under the roof area of any building, or in a backyard area, screened by a substantially opaque fence at a minimum height of five (5) feet or the height of the vehicles, whichever is more, provided that any fence constructed or modified pursuant to this subsection must meet any and all other requirements of the City Code.

~~3. A single inoperable vehicle in combination with any of the conditions described in Section 30.3.2 (A) shall be deemed a violation of this subsection. It is an affirmative defense to a violation of this subsection that the vehicle was registered to a resident of the property, that the vehicle was undergoing repair, and that the total period during which the vehicle was inoperable did not exceed fourteen (14) days. This affirmative defense may not be raised more than three (3) times in any combination of civil or criminal proceedings in any one (1) calendar year.~~

SECTION 3. AMENDMENT OF CHANDLER CITY CODE.

The Chandler City Code Chapter 30, Section 30-6, is amended as follows: (a) Subsection 30-6.1 is hereby adopted to clarify the methods of enforcement authorized by the code; (b) new Subsection 30-6.2 is adopted to provide for emergency abatement; (c) Subsection 30-6.4.A is hereby adopted to make conforming changes; (d) new Subsection 30-6.6.B is hereby adopted to provide for court-ordered abatement; (e) provisions of Section 30-6 subsections are renumbered to reflect adopted amendments; (f) all references to section 30-11 are repealed as obsolete. Section 30-6 is adopted to read as follows:

30-6.1. Authority to enforce.

A. The City Manager/designee is hereby authorized and directed to enforce the provisions of this chapter by any of the methods provided in this City Code or in law **including, but not limited to, voluntary compliance, consent order, administrative enforcement, civil infraction and abatement, criminal enforcement, emergency abatement, court-ordered abatement and designation of slum property**. In addition, the City Manager/designee is authorized to make safe any structure, in whole or part, which in the opinion of the City Manager or designee, is an imminent threat to the health or safety of any person or persons due to the conditions of such structure. Such work shall be limited to the minimum work necessary to remove the hazard, or secure the hazard through boarding or fencing.

B. No person shall, by threat or use of violence or physical force, or by threatening to do or doing any other act that can be reasonably anticipated to cause physical harm to any person including the perpetrator, intentionally obstruct, impede, or interfere with any officer, employee, contractor or authorized representative of the City who is lawfully and constitutionally engaged in the enforcement or execution of the provisions of this chapter. Any person who violates this provision shall be guilty of a misdemeanor and shall be subject to the penalties provided in Chapter 1 of this Code.

30-6.2. Emergency Abatement.

A. If a violation of this chapter presents an imminent hazard to life, health or public safety, the city may notify the owner, the owner's authorized agent, the owner's statutory agent, occupant, lessee and/or person responsible for the violation to correct the violation immediately or the city may abate the violation through an ex parte order of the municipal court.

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 City may abate the violation by taking the minimal steps reasonably necessary as allowed by the court to eliminate the imminent hazard to life, health or public safety.

E. The City may assess the owner, occupant or person responsible for a violation for the cost of any emergency abatement, including administrative costs, by any means authorized by law.

30-6.~~32~~. Voluntary compliance. Nothing in this chapter shall preclude the City Manager/designee from seeking voluntary compliance with the provisions of the City Code or from enforcing this chapter, proactively or reactively, through warnings, notices to comply, or other such devices designed to achieve compliance in the most efficient and effective manner under the circumstances.

30-6.~~43~~. Notice to comply.

A. *Notification.* If the City finds a violation of this Chapter, in the first instance, in any given twelve-month period, **other than when the violation presents an imminent hazard to life, health or public safety under 30-6.2,** the City shall notify the responsible person through the issuance of a notice to comply. This does not apply to violations of sections 30.6.1.B ~~or 30-11~~.

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30-6.~~64~~. Violations and penalties.

A. *Cumulative remedies.* The remedies herein are cumulative when there are separate violations and the City may proceed under one (1) or more of such remedies when there is more than one (1) violation. Any responsible person who violates any provision of this chapter except for violations of section ~~30-11 and~~ 30-6.1 B or who knowingly maintains or commits a public nuisance or who knowingly fails or refuses to perform any legal duty relating to the removal of a public nuisance is guilty of a civil infraction punishable as set forth in Section 1-8.7A of this Code unless such violation causes such person to meet the definition of a "habitual offender" set forth in Section 1-8.7B of this Code, in which case they shall be guilty of a criminal misdemeanor punishable as set forth in Section 1-8.3 of this Code. Any continuing violation of this chapter constitutes a public nuisance that may be abated by the City as set forth in Chapter 26 of this Code. Imposition of a fine or penalty assessment shall not relieve the owner of the responsibility for abatement of the violation(s) or excuse him/her from liability for any and all costs incurred by the City for abatement.

B. In addition to any other abatement procedure provided in this chapter, the city attorney or city prosecutor may petition the municipal court for an order permitting the city to abate any condition that constitutes a violation of this ordinance. The court shall conduct an informal hearing after written notice, served by personal service or certified mail, to the owner as recorded in the office of the County Recorder, and any responsible party. The rules of evidence shall not apply to the hearing. Each party shall have an opportunity to be heard and present evidence at the hearing. Any failure to appear after notice of the hearing may be deemed a waiver by that party to submit evidence or to be heard. The court's determination on whether a condition or violation of this ordinance exists shall be based on a preponderance of the evidence. Upon finding that abatement is appropriate the court may order the city to take any action reasonably necessary to abate the condition that constitutes a violation. The reasonable costs of any abatement permitted by the court order are the responsibility of the owner and may be collected as provided by law.

C~~B~~. Each day any violation of any provision of this chapter or a failure to perform any act or duty required by this chapter exists shall constitute a separate violation or offense.

D~~C~~. The owner of record, as recorded in the Maricopa County Recorder's Office records of the property upon which a violation of this chapter exists may be presumed to be a person having lawful control over any building, structure or parcel of land. If more than one (1) person shall be recorded as the owner of the property, said persons may 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 chapter against any responsible person or other person having control over a building, structure or parcel of land.

~~D. In addition to any other sanction or penalty, the court may issue an abatement order in accordance with the provisions of Chapter 26 of this Code.~~

INTRODUCED AND TENTATIVELY APPROVED by the City Council this ____ day of November, 2013.

ATTEST:

_____	_____
CITY CLERK	MAYOR

PASSED AND ADOPTED by the City Council this ___ day of November, 2013.

ATTEST:

_____ CITY CLERK

_____ MAYOR

APPROVED AS TO FORM:

_____ CITY ATTORNEY