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MAR 13 2008



**Chandler • Arizona**  
*Where Values Make The Difference*

**MEMORANDUM**

**Neighborhood Resources - Council Memo No. 08-01**

**DATE:** MARCH 13, 2008

**TO:** MAYOR AND COUNCIL

**THRU:** W. MARK PENTZ, CITY MANAGER  
RICH DLUGAS, ASSISTANT CITY MANAGER *RD*

**FROM:** JUDY REGISTER, DIRECTOR, NEIGHBORHOOD RESOURCES

**SUBJECT:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING CHAPTER 1, SUBSECTIONS 1-8.3 AND 1-8.4, AMENDING CHAPTER 11 BY ADDING A NEW SECTION 11-9 AND AMENDING CHAPTER 30, SECTION 30-2 AND SUBSECTION 30-3.2 OF THE CODE OF THE CITY OF CHANDLER TO ADDRESS LEGISLATIVE MANDATES RELATING TO FUGITIVE DUST CONTROL AND DECLARING AN EMERGENCY

RECOMMENDATIONS: Staff recommends adoption of Ordinance No. 4045 of the City Council of the City of Chandler, Arizona, amending Chapter 1, subsections 1-8.3 and 1-8.4, amending Chapter 11 by adding a new Section 11-9 and amending Chapter 30, Section 30-2 and subsection 30-3.2 of the Code of the City of Chandler to address Legislative mandates relating to fugitive dust control and declaring an emergency.

BACKGROUND/DISCUSSION: On June 28, 2007, SB 1552 was signed by the Governor making changes to statutes related to control of particulate matter (PM-10) emissions (Clean Air Act). The legislation was created in response to the state's failure to meet PM-10 standards by December 31, 2006, that were mandated by the Environmental Protection Agency (EPA). The Maricopa Association of Governments was required to submit a State Implementation Plan (SIP) to the EPA by December 31, 2007 that included measures to reduce PM-10 emissions over three years. Additionally, MAG was required to submit a SIP to the EPA by June 15, 2007 that demonstrated an approach to reducing the ozone level in the air and emissions of ozone precursors. The amendments to the Code as specified in this action are required to provide enforcement of the actions specified by the legislation.

The ordinance being presented to Council in this request addresses additional mandates of the legislation that must be implemented by March 31, 2008 and include adoption and amendment of codes or ordinances related to the following:

On June 28, 2007, the Chandler City Council passed Resolution No. 4091 to proceed with implementation measures related to the Clean Air Act and directed staff to undertake appropriate actions and execute the documents necessary to implement the provisions of the Resolution. As of March 3, several actions have been implemented in accordance with the commitments made to control PM-10 emissions. Those are outlined in the attachment on compliance measures.

FISCAL IMPLICATIONS:

Cost: No additional costs other than those set forth in Resolution 4091  
Savings: N/A  
Long Term Costs: N/A

PROPOSED MOTION: Move that Council adopt Ordinance No. 4045 of the City Council of the City of Chandler, Arizona, amending Chapter 1, subsections 1-8.3 and 1-8.4, amending Chapter 11 by adding a new Section 11-9 and amending Chapter 30, Section 30-2 and subsection 30-3.2 of the Code of the City of Chandler to address Legislative mandates relating to fugitive dust control and declaring an emergency.

Attachments: Ordinance No. 4045  
Resolution No. 4091  
Summary of PM-10 Compliance Measures

ORDINANCE NO. 4045

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING CHAPTER 1, SUBSECTIONS 1-8.3 AND 1-8.4, AMENDING CHAPTER 11 BY ADDING A NEW SECTION 11-9 AND AMENDING CHAPTER 30, SECTION 30-2 AND SUBSECTION 30-3.2 OF THE CODE OF THE CITY OF CHANDLER TO ADDRESS LEGISLATIVE MANDATES RELATING TO FUGITIVE DUST CONTROL AND DECLARING AN EMERGENCY.

WHEREAS, several areas within the State, including Maricopa County, are not in compliance with United States Environmental Protection Agency standards for National Ambient Air Quality (NAAQS) for particulate matter;

WHEREAS, compliance with NAAQS for particulate matter is an issue of public health and safety;

WHEREAS, the State passed and adopted Senate Bill 1552 (SB 1552) in 2007 to prescribe new measures for the State and its political subdivisions to control fugitive dust believed to be necessary to achieve compliance with NAAQS for particulate matter;

WHEREAS, under SB 1552, the City of Chandler is required to adopt specified measures to limit fugitive dust emissions that impact compliance with NAAQS for particulate matter by no later than March 31, 2008; and

WHEREAS, the measures to be adopted pursuant to this Ordinance are no broader than necessary to comply with the mandates set forth under SB 1552; and

WHEREAS, the City of Chandler believes that limiting fugitive dust emissions is important to the health and safety of its residents and that the control measures set forth in this Ordinance satisfy the requirements set forth in SB 1552.

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

**Section 1.** Subsection 1-8.3 of Section 1-8 of Chapter 1, Code of the City of Chandler, is hereby amended to read as follows:

*1-8.3.* Except as otherwise provided by law or ordinance, a person convicted of a violation of this Code shall be guilty of a Class 1 misdemeanor. A Class 1 misdemeanor is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500.00), by imprisonment for a term not exceeding six (6) months, by probation for a term not exceeding three (3) years, or by any combination thereof. A Class 2 misdemeanor is punishable by a fine not exceeding seven hundred fifty dollars (\$750.00), by imprisonment for a term not exceeding four (4) months, by probation for a term not exceeding two (2) years, or by any combination thereof. A Class 3 misdemeanor is punishable by a fine not exceeding five hundred dollars (\$500.00), by imprisonment for a term not exceeding thirty (30) days, by probation for a term not exceeding one (1) year, or by any combination thereof. Except as otherwise provided by law or ordinance,

with respect to violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense.

**Section 2.** Subsection 1-8.4 of Section 1-8 of Chapter 1, Code of the City of Chandler, is hereby amended to read as follows:

*1-8.4.* The sentence to pay a fine, imposed on an enterprise convicted of a Class 1 misdemeanor shall be an amount not more than twenty thousand dollars (\$20,000.00), on an enterprise convicted of a class 2 misdemeanor shall be an amount not more than ten thousand dollars (\$10,000.00), and on an enterprise convicted of a Class 3 misdemeanor shall be an amount not more than two thousand dollars (\$2,000.00).

**Section 3.** Chapter 11, Code of the City of Chandler, is hereby amended by adding a new Section 11-9, which section number had been reserved, to read as follows:

**11-9. Motor vehicle use on property that has not been stabilized.**

*11-9.1. Vacant lots.* The use of any motorized vehicle, including an off-highway vehicle, an all-terrain vehicle or an off-road motor vehicle on any vacant lot that has not been stabilized is prohibited. Stabilized means ground surfaces treated with asphaltic concrete, cement concrete, hardscape, penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate, decomposed granite cover, crushed granite cover, aggregate cover, gravel cover, grass or other continuous vegetative cover, or any combination of these stabilizers.

*11-9.2. Unpaved surfaces.* The use of any motorized vehicle, including an off-highway vehicle, an all-terrain vehicle or an off-road motor vehicle on an unpaved surface that is not a public or private road, street or lawful easement and that is closed by the landowner by rule or regulation of a federal agency, the state, Maricopa County or the city, or by proper posting if the land is private land, is prohibited.

*11-9.3. No Preemptions.* This section does not prohibit or preempt the enforcement of other ordinances or code provisions relating to dust abatement or city development standards.

*11-9.4. Exceptions.* This section does not apply to the operation of motor vehicles used in the normal course of business or in the normal course of government operations.

*11-9.5. Alternative Remedies.* In addition to or in lieu of any fine or penalty to be assessed for a violation of this section, a judge may order the person in violation of the section to perform at least eight (8) but no more than twenty-four (24) hours of community restitution or to complete an approved safety course related to the off-highway operation of motor vehicles, or both.

*11-9.6. Violation.* A person who violates this section is guilty of a Class 3 misdemeanor.

**Section 4.** Section 30-2 of Chapter 30, Code of the City of Chandler, is hereby amended by adding, in proper alphabetical order, definitions of “Fugitive Emissions or Fugitive Dust,” “Landscape Debris,” “Leaf Blower” and “Stabilization” to read as follows:

*Fugitive Emissions or Fugitive Dust.* Any particulate matter that becomes airborne, other than particulate matter that directly or indirectly passes through a stack, chimney, vent or other functionally equivalent opening as a result of human activity.

*Landscape Debris.* Material generated or accumulated as a result of, or moved in the course of, landscape operations. Landscape debris includes, but is not limited to, grass clippings, leaves, branches, vegetative matter, rubbish, soil and rock.

*Leaf Blower.* Any device that generates a stream of air that is designed, or used, to move landscape debris.

*Stabilization or Stabilized.* Treatment of ground surfaces with asphaltic concrete, cement concrete, hardscape, penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate, decomposed granite cover, crushed granite cover, aggregate cover, gravel cover, grass or other continuous vegetative cover, or any combination of these stabilizers.

**Section 5.** Subsection 30-3.2 of Section 30-3 of Chapter 30, Code of the City of Chandler, is hereby amended by adding new paragraphs H and I to read as follows:

*H. Parking or Maneuvering on Unimproved Surfaces.*

1. On or after October 1, 2008, all parking, maneuvering, ingress and egress areas on any lot or parcel of land developed for a use other than residential use with four or fewer dwelling units shall be maintained with a surface material satisfying the requirements for parking surfaces set forth in Section 35-1802(5) of this Code. This subparagraph shall not prevent the enforcement of zoning provisions under Chapter 35 of this Code relating to the development, maintenance or improvement of parking, maneuvering, ingress and egress areas.

2. On or after October 1, 2009, all parking, maneuvering, ingress and egress areas that are three thousand square feet or more in size on a lot or parcel that is developed for residential use with four or fewer dwelling units shall be maintained with a surface material satisfying the requirements for parking surfaces set forth in Section 35-1802(5) of this Code. This subparagraph shall not prevent the enforcement of zoning provisions under Chapter 35 of this Code relating to the development, maintenance or improvement of parking, maneuvering, ingress and egress areas.

3. No person shall park any motor vehicle on any vacant lot that has not been stabilized. In any proceeding alleging a violation of this subparagraph, all persons in whose names the motor vehicle is registered shall be jointly and severally prima facie responsible for such violation.

*I. Leaf Blowers and Landscape Debris.* No person shall cause or permit landscape debris or other material to be blown or placed in or on any highway, street, alley, public place or public right-of-way. No person shall operate a leaf blower over surfaces that have not been stabilized.

**Section 6.** Pursuant to Subsection 1-8.7 and Section 26-12, Code of the City of Chandler, any person violating sections 4 and 5 of this Ordinance amending Chapter 30, Code of the City of Chandler, may be punished by imposition of a civil sanction not to exceed five hundred dollars (\$500.00), unless another penalty is specified. Any person who commits a violation of this code after previously having been found responsible for committing two (2) or more infractions of this code within any thirty-six (36) month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be guilty of a Class 1 criminal misdemeanor punishable by a fine not exceeding two thousand five hundred dollars (\$2,500.00), by imprisonment for a term not exceeding six (6) months, by probation for a term not exceeding three (3) years, or by any combination thereof. Each day a violation continues shall constitute a separate offense.

**Section 7.** That because the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health, life and property of the City of Chandler, an emergency is hereby declared to exist, to-wit: fugitive dust emissions pose a health and safety risk to the citizens of the City of Chandler and the terms of this Ordinance must be quickly adopted to satisfy state legislative mandates. This Ordinance shall be in full force and effect from and after the passage, adoption and approval by the City Council of the City of Chandler, and it is hereby exempt from the referendum provisions of the Constitution and the laws of the State of Arizona.

PASSED AND ADOPTED by the Mayor and City Council of the City of Chandler, Arizona, this 13th day of March, 2008.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4045 was duly passed and approved by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 13th day of March, 2008, and that the vote was \_\_\_\_ Ayes, \_\_\_\_ Nays.

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

PUBLISHED:

**RESOLUTION NO. 4091**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, TO IMPLEMENT MEASURES IN THE MAG 2007 FIVE PERCENT PLAN FOR PM-10 FOR THE MARICOPA COUNTY NON-ATTAINMENT AREA.

WHEREAS, the Maricopa Association of Governments (MAG) has been designated by the Governor of Arizona, as the regional air quality planning agency in Maricopa County; and

WHEREAS, the Maricopa County non-attainment area is classified as a Serious Area for PM-10 particulate matter according to the Clean Air Act; and

WHEREAS, the Five Percent Plan for PM-10 is required by the Clean Air Act since the Maricopa County non-attainment area failed to attain the PM-10 standard by December 31, 2006; and

WHEREAS, the plan is required to reduce PM-10 emissions by five percent per year until the standard is met; and

WHEREAS, Arizona Revised Statutes § 49-406.G requires that each agency that commits to implement a control measure describe that commitment in a resolution adopted by the governing body which specifies its authority for implementing the measure as provided in statute, ordinance or rule; a program for enforcement of the measures; and the level of personnel and funding allocated to the implementation of the measure.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona as follows:

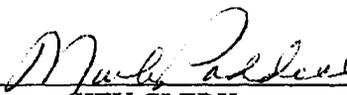
SECTION 1. That the City Council of the City of Chandler agrees to proceed with a good faith effort to implement the measures identified in Exhibits "A" through "I", which are attached hereto and made a part of this Resolution No. 4091.

SECTION 2. That the City Council of the City of Chandler commits to implement the measures as scheduled and with the funding sources identified in Exhibits "A" through "I". Recognizing, however, that the availability of necessary funding may depend on the funding programs or processes of various state and federal agencies, the City Council of the City of Chandler agrees to consider modifications of the funding or schedules for implementation actions, if necessary.

SECTION 3. That City staff is directed to undertake those activities and execute those documents necessary to implement the provisions of this Resolution.

PASSED AND ADOPTED by the Mayor and City Council of the City of Chandler, Arizona, this 28<sup>th</sup> day of June, 2007.

ATTEST:

  
CITY CLERK

  
CITY OF CHANDLER  
CORPORATE  
SEAL  
ARIZONA

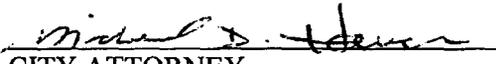
  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4091 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 28<sup>th</sup> day of June, 2007, and that a quorum was present thereat.

  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

## **Status of PM-10 Projects**

**March 03, 2008**

In accordance with Resolution 4091, signed on June 28, 2007, City staff has moved forward to meet the commitments to control PM-10 emissions in the City of Chandler. Below is a summary of actions on these committed measures:

- A. Communication and Public Affairs has implemented PM-10 public education efforts including the distribution of information to HOAs, development of media releases, council commentaries, city newsletter articles, placement of information on the City's Web site and on Cable Channel 11.
- B. While the City has relatively few off-road areas frequented by off-road vehicles Neighborhood Services enforcement of existing rules limits such activity on vacant lots.
- C. The Streets Department utilizes only PM-10 certified street sweepers to sweep City streets. Current sweeping schedules conform to commitments made in the resolution.
- D. The City has fenced off the portion of site 7 owned by the City and will add decomposed granite to preclude dust. All other downtown City owned lots being used for parking already had decomposed granite and nothing further is planned for these parking lots.
- E. Work has commenced on stabilization of 10 miles of alleys and the portion of Ryan Road to be paved under this commitment has been completed.
- F. Speed limit signs of 15 miles per hour have been posed on the remaining unpaved roadways as committed.
- G. Contracts have been issued for the 12 miles of shoulders to be stabilized for this year. This year CIP projects have completed in excess of the 5 miles of curb and gutter committed under this resolution.
- H. Vehicle use and parking on vacant lots is currently prohibited by existing ordinance and is being enforced by Neighborhood Resources.
- I. The ordinance controlling vehicle trespass on vacant lots are already in force and being enforced as part of Neighborhood Resources.