

ORDINANCE NO. 2017-30

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA AMENDING CHAPTER 17 OF THE PEORIA CITY CODE (1992) BY AMENDING SECTION 17-1 PERTAINING TO PUBLIC NUISANCES; PURPOSE AND SCOPE; BY AMENDING SECTION 17-2 PERTAINING TO PUBLIC NUISANCES; DEFINITIONS; BY AMENDING SECTION 17-3 PERTAINING TO PUBLIC NUISANCES; PROHIBITION; BY AMENDING SECTION 17-4 PERTAINING TO PUBLIC NUISANCES; ENFORCEMENT; BY AMENDING SECTION 17-51 PERTAINING TO NUISANCE; ENFORCEMENT; VIOLATION AND PENALTIES; BY AMENDING SECTION 17-52 PERTAINING TO NUISANCE; JURISDICTION OF COURT; BY AMENDING SECTION 17-53 PERTAINING TO NUISANCE; CIVIL PENALTIES, LIEN ENFORCEMENT; BY AMENDING SECTION 17-57 PERTAINING TO NOTICE OF VIOLATION; RUBBISH, TRASH, WEEDS, FILTH, DEBRIS, AND DILAPIDATED STRUCTURES; BY AMENDING SECTION 17-58 PERTAINING TO APPEALS OF NOTICES OF VIOLATION; RUBBISH, TRASH, WEEDS, FILTH, DEBRIS, AND DILAPIDATED STRUCTURES; BY AMENDING SECTION 17-60 PERTAINING TO ORDER OF ASSESSMENT; BY AMENDING SECTION 17-61 PERTAINING TO NUISANCE; ABATEMENTS; ASSESSMENTS; LIEN ENFORCEMENT; BY AMENDING SECTION 17-65 PERTAINING TO SHOPPING CARTS; DEFINITIONS; BY AMENDING SECTION 17-66 PERTAINING TO SHOPPING CARTS; RESTRICTIVE DEVICES REQUIRED; VIOLATIONS; PENALTIES; BY AMENDING SECTION 17-67 PERTAINING TO SHOPPING CARTS; ACTIVITIES; PROHIBITIONS; NOTICES; APPLICABILITY; CONSENT; PRESUMPTION; VIOLATIONS; BY AMENDING SECTION 17-68 PERTAINING TO SHOPPING CARTS; FINDING; IMPOUNDMENT OF SHOPPING CARTS BY LOCAL AGENCIES; CONDITIONS; EMERGENCIES; COSTS; FINES; DISPOSAL OF UNCLAIMED CARTS; APPLICABILITY; BY AMENDING SECTION 17-72 PERTAINING TO SMOKING IN ENCLOSED PUBLIC PLACES; DEFINITIONS; BY AMENDING SECTION 17-73 PERTAINING TO SMOKING IN PLACES OF

EMPLOYMENT; BY AMENDING SECTION 17-74
PERTAINING TO SMOKING; RESTAURANTS; BARS,
EXEMPTIONS; AND PROVIDING FOR
SEVERABILITY AND FOR AN EFFECTIVE DATE.

THEREFORE, it is ordained by the Mayor and Council of the City of Peoria as follows:

SECTION 1. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-1 pertaining to Public Nuisances; purpose and scope and which shall read as follows:

Sec. 17-1. Public Nuisances; purpose and scope.

(a) The purpose of this ~~Ordinance~~Chapter is to define and prohibit public nuisances.

(b) This ~~Ordinance~~Chapter shall apply to all land within the City of Peoria without regard to the use or occupancy or the date of acquisition, alteration, or improvement of such land.

SECTION 2. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-2 pertaining to Public Nuisances; definitions and which shall read as follows:

Sec. 17-2. Public Nuisances; definitions.

The following words, terms, and phrases when used in this ~~Ordinance~~Chapter shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) “~~a~~Abandoned or inoperable vehicle” means any vehicle that is:

(1) partially or wholly dismantled, discarded, wrecked, on blocks or similar devices, stripped, or scrapped; or

(2) a vehicle with a deflated tire or tires or missing any wheel or tire; or

(3) ~~or~~ any motor vehicle which is inoperable due to mechanical failure or mechanical disassembly. Any motor vehicle missing a windshield, hood, fenders, doors, bumpers, engine, transmission, interior seats or operating controls is deemed to be inoperable; or

(4) ~~or~~ any motor vehicle not displaying on the motor vehicle license plates and/or tags indicating current registration in this state or some other jurisdiction.

(b) “Bar” means an area devoted primarily to the serving of alcoholic beverages, to which food service is only incidental or which is the holder of a license issued under A.R.S. § 4.206.01 by the Arizona Department of Liquor Control.

(c) “Blight” or “Blighted” means unsightly conditions including accumulation of debris; fences characterized by holes, breaks, rot, crumbling, cracking, peeling or rusting, landscaping that is dead, characterized by uncontrolled growth, lack of maintenance or damage; buildings, structures, whether main or accessory characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or any other evidence or physical decay, neglect, excessive use or lack of maintenance; other similar conditions of disrepair and deterioration regardless of the condition of other properties in the neighborhood.

(d) “Designated smoking area” means any area within an enclosed public place where smoking is specifically permitted. Any area in which smoking is permitted shall be located, to the fullest extent possible, in such a manner as to confine smoke to that area.

(e) “Disturbed surface area” means any portion of the earth’s surface, or materials placed thereon, that has been physically moved, uncovered, destabilized, or otherwise changed from its undisturbed natural condition, thereby increasing the potential for emission of fugitive dust.

(f) “Dust suppressants” means water, hygroscopic materials, solution of water and chemical surfactant, foam or non-toxic chemical/organic stabilizers not prohibited for use by any applicable law, rule, or regulation, as a treatment material to reduce fugitive dust emissions.

(g) “Employee” means any person who is employed by any employer for direct or indirect monetary wages or profit. For purposes of this ~~Ordinance~~Chapter, the designation “independent contractor” shall not prevent a person from being deemed an “employee.”

(h) “Employer” means any person employing the services of at least one person.

(i) “Enclosed public place” means any area enclosed by a roof and walls with one or more openings for ingress and egress, which is available to and customarily used by the public. Enclosed public places governed by this ~~Ordinance~~Chapter shall include, but shall not be limited to, public areas such as elevators, waiting rooms, reception areas, lobbies, rest-rooms, restaurants, retail stores, retail service establishments, grocery stores, convenience markets, drugstores, shopping malls, theaters, auditoriums, public and private stores, offices of health care professionals, pharmacies, indoor sports facilities and their lobbies, public transportation vehicles and terminals, airport service lines, airport waiting lounges, taxicabs or other means of public transit, community centers,

child care centers, public or common areas of hotels and motels, financial institutions, all indoor facilities and any public places already regulated by Arizona Revised Statutes § 36-601.01. A private residence is not an enclosed public place.

(j) “Fence, screen wall, and/or retaining wall” includes free-standing, self-supporting structures constructed of durable wood, chain link with privacy slats, metal, masonry, composites, or other standard fencing materials designed to provide privacy, security, screening, or bank retention between grade separations.

(k) “Firebreak” means an area of land that has had plants and trees removed to stop the spread of a fire. Cleared area should be 10 feet from the property line adjacent to a vacant parcel, or 15 feet from the property line for parcels with a structure.

(kl) “Garbage” means an accumulation of spoiled or discarded animal or vegetable material resulting from the handling, preparation, cooking, or consumption of food for humans or animals, as well as other organic waste material subject to rapid decomposition.

(lm) “Grass” includes Barnyard grass, Bermuda grass, Bluegrass, Brome grasses, Crab grass, Foxtail, Johnson grass, Ragweed, Rye grass, wild oats, or hybrids thereof.

(mn) “Hazard” means a condition that may cause personal physical harm.

(no) “Junk” includes items that in their present state are of little or no apparent economic value that are not confined within an industrial area in compliance with the Peoria Zoning Ordinance Code in Chapter 21 of this Code, such as an accumulation of the following materials: discarded or scrapped furniture; glass, metal, paper, or machinery parts; inoperable machinery or appliances; building material wastes; litter; ~~or~~ discarded or empty containers; automobile parts or mechanical parts. Junk shall also include all types of solid waste described in chapter 22 of this code.

(op) “Land” means all land in the City of Peoria, whether unimproved or on which buildings or other structures are located.

(q) “Legal driveway” —means a short private road from a street to the principal structure’s garage or carport. For principal structures without a garage or carport a single location shall be designated connected to principal structure.

(pr) “Occupant” means the person occupying or having custody of a structure or premises as a lessee or otherwise.

(~~qs~~) “Owner/operator” means any person who owns, leases, operates, controls, maintains, or supervises a premises or a fugitive dust source subject to the requirements of this ~~Ordinance~~Chapter.

(~~rt~~) “Person” means a human being, enterprise, corporation, association, partnership, firm, or society.

(~~su~~) “Place of employment” means any area under the control of a private or public employer, which is intended for occupancy by employees during the course of employment, including, but not limited to, work areas, offices, employee lounges, conference and meeting rooms, employee cafeterias and lunchrooms, classrooms, auditoriums, hallways, stairways, waiting areas and restrooms. A private residence is not a place of employment.

(~~tv~~) “Plant growth” means vegetation, whether living or dead, such as grass, weeds, vines, bushes, cactus, or trees.

(~~uw~~) “Premises” means all land, any dwelling, house, building or other structure, designed or used either wholly or in part for residential, commercial or agricultural purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps or vestibules belonging or appurtenant to such dwelling, house, building or other structures.

(~~vx~~) “Private clubs and private recreation facilities” means an establishment which:

- (1) Charge a membership fee that must be paid in advance of arrival to the establishment and are not open to invitees of members or the general public, or
- (2) ~~membership~~ Membership is limited to those persons who have served in the armed forces of the United States or this state.

For purposes of this definition, a charge which is paid at the door upon entry to the establishment is specifically designated not to be a membership fee.

(~~wy~~) “Public place” means any street, sidewalk, boulevard, alley, right-of-way, or other public way and any public park, square, space, ground, or building.

(~~xz~~) “Stored” means parking, leaving, locating, keeping, maintaining, depositing, remaining, or being physically present on public or private property.

(~~yaa~~) “Street or highway” means the entire width between the boundary lines of every right-of-way publicly owned or maintained when any part thereof is open to the use of the public for the purpose of vehicular traffic.

(bb) "Structure" means any constructed or erected material or combination of materials the use of which requires location on the ground or attachment to something located on the ground, including inter-alia buildings, stadiums, radio towers, sheds, storage bins and fences.

(zcc) "To smoke or smoking" means burning or carrying any lighted cigarette, tobacco or other weed or plant or placing any burning tobacco, weed or plant in a ashtray or other receptacle and allowing smoke to diffuse into the air.

(~~aa~~dd) "Vacant lot" means a tract, lot, or parcel of improved or unimproved land, residential, industrial, institutional, governmental, or commercial for which there is no approved or permitted building or structures of a temporary or permanent nature.

(~~bb~~ee) "Vehicle" means every device by which any person or property is or may be transported or drawn upon a street or highway, excepting devices moved by human power or used exclusively upon stationary rails or tracts.

(~~cc~~ff) "Weeds" means for any residential lot of one acre or less, any uncultivated shrubs or uncultivated vegetation higher than 12 inches, lawn grass higher than 6 inches, and any vegetation that is dead. For lots greater than one acre in size, "Weeds" means any uncultivated shrubs or uncultivated vegetation that is permitted to grow in such a manner as to cover the area designated as a firebreak zone by the City between adjacent properties and the subject property, and those types of plant growth defined as noxious weeds in A.R.S. §3-201 regardless of whether a particular property owner or occupant who is the subject of enforcement action under this ~~Ordinance~~Chapter regards the growth as desirable.

(gg) "Wildflower" a flower that grows in natural places without being planted by people.

SECTION 3. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-3 pertaining Public nuisances; prohibition and which shall read as follows:

Sec. 17-3. Public nuisances; prohibition.

The following acts, omissions, conditions, and things in or upon any land or structure in the City constitute public nuisances, the existence of which are hereby prohibited and declared to be unlawful:

(a) It shall be unlawful for any person to cause or allow any abandoned or inoperable vehicle to be stored or placed on, or allowed to remain on, any property except in complete conformance with the terms of this Subsection.

(1) All abandoned or inoperable vehicles or vehicles in residential areas being restored or repaired for longer than 48 consecutive hours within a fourteen (14) consecutive day period, starting the first day the vehicle is located unscreened shall be stored safely within a lawful, permitted enclosed building or structure having a perimeter composed of rigid walls and a roof or screened by a lawful six foot fence.

(2) ~~, or shall be stored~~ All inoperable vehicles on the premises of a business enterprise operated in a lawful place and manner shall be stored in accordance with the provisions of the Peoria City Code where the storage of the vehicle is necessary to the operation of the business enterprise.

(3) A waiver or reasonable accommodation may be issued upon review by the Neighborhood Service Manager for active military or disabled individuals.

(b) It shall be unlawful to park or store any vehicle within the front, side or rear yard of a single or multi-family residence ~~use~~ unless such parking or storage is on an improved, dustproof-parking surface such as concrete asphalt, "chip seal", or crushed rock or aggregate that is a minimum of three inches thick. All crushed rock or aggregate shall be contained by a permanent border and must be treated with a dust palliative in such a manner as to prevent the release of fugitive dust. The property owner and/or legal occupant of the property shall be under a continuous duty to maintain the parking surface in a manner to meet the minimum requirements of this subsection and to treat crushed rock or aggregate not less than two (2) times a year with a dust palliative.

(c) Parking within the front yard of a single residence ~~use~~ shall be on or contiguous to a legal driveway. Parking within the side or rear yard of a single residence ~~use~~ shall have continuous access to a legal driveway meeting the dustproof requirements of this subsection.

(de) Any existing single or multi-family residence having unimproved parking shall by October 1, 2009 improve all existing parking areas with a dustproof-parking surface such as concrete asphalt, "chip seal", or crushed rock or aggregate that is a minimum of three inches thick. All crushed rock or aggregate shall be contained by a permanent border and must be treated with a dust palliative in such a manner as to prevent the release of fugitive dust. The property owner and/or legal occupant of the property shall be under a continuous duty to maintain the parking surface in a manner to meet the minimum requirements of this subsection and to treat crushed rock or aggregate not less than two (2) times a year with a dust palliative

(ed) It shall be unlawful to erect or to attach to any fence any glass, nails, metal objects or other materials in such a manner that is likely to injure any person

who comes in contact with such object, or to erect or maintain any barbed wire or razor wire except that no more than three strands of barbed wire or one coil of razor wire not less than six feet and two inches above the ground are permitted at the top of an otherwise lawful fence enclosing a municipal, institutional, or commercial use. Barbed wire fencing is not prohibited on premises larger than one acre used for agricultural or livestock purposes. Barbed wire or razor wire shall not extend beyond the premises permitted to be enclosed.

(fe) It shall be unlawful for an owner or occupant to fail to properly repair, replace, maintain, or remove any fence, screen wall, or retaining wall visible from the adjacent right-of-way that is collapsed or otherwise constitutes a hazard.

(gf) No person shall place any rubbish, trash, filth, debris, or abandoned construction materials upon any private or public property not owned or operated by said person unless it is a solid waste disposal or other facility authorized by law.

(hg) No person shall deposit, store, or maintain any garbage, junk or an accumulation of discarded scrapped items and/or materials such as to include but not limited to vehicle parts, automobile parts, second hand items, household fixtures, abandoned equipment, appliances, indoor furniture, boxes, crates, packing cases, mattresses, bedding, lumber, scrap iron, tin and other metals unless stored safely within a lawful, enclosed building, structure, or screened by a lawful fence or within a trash receptacle in such a manner as to not be visible from public view, except as authorized for collection under chapter 22 of this code.

(ih) No person shall deposit in, sweep upon, or permit to drain into any public right-of-way, public place, or private right of way open to the public within the City any garbage, junk, obstruction, or similar matter or any hazardous material that impedes passage or is detrimental to public health.

(i) It is the responsibility of the owner, lessee or other person in control of any land abutting a sidewalk, alley, or street responsibility to maintain such sidewalk, alley, or street on which such land abuts in a clean condition in such a manner as to be free from all of the following:

- (1) Litter, garbage, debris, rubble.
- (2) Insect and rodent infestation.
- (3) Overgrown vegetation, dead trees, brush and weeds.
- (4) Other conditions that present a health, fire or safety hazard.

(ki) No owner or occupant of land within the City shall allow plant growth that is dead, dormant, or so dry as to be readily flammable or combustible on such land that it may constitute a fire hazard.

(~~lj~~) No owner or occupant of a parcel of land shall allow thereon weeds or grass either to attain a height in excess of six inches or to create a danger to public health through the breeding or harborage of harmful insects or other pests. For lots in excess of one acre a firebreak may be used between the adjacent properties and the subject property. Wildflowers are exempt from this Subsection, except when plant growth becomes dead, dormant, or so dry as to be readily flammable or combustible on such land that it may constitute a fire hazard.

(~~mk~~) Except for weed abatement operations described in Subsection (~~lk~~) of this Section, no owner or operator responsible for weed abatement on vacant lots shall remove vegetation from any vacant lot by blading, disking, plowing under, or any other means without doing all of the following:

(1) Applying a minimum standard three-inch dust suppressant(s) stabilizing the total surface area subject to disturbance immediately before or during the weed abatement.

(2) Preventing or eliminating the tracking of dust onto paved surfaces and access points adjoining paved surfaces.

(3) Applying a minimum standard three-inch dust suppressant(s) stabilizing the entire disturbed surface area immediately after the weed removal by compacting the ground or applying gravel or dust suppressant.

(~~nl~~) The following are exempt from Subsection (~~mj~~) of this Section:

(~~21~~) Weed abatement operations on any vacant lot with less than 0.50 acre (21,780 square feet) of disturbed surface area.

(~~32~~) Weed abatement operations that received an approved Earth Moving permit under Maricopa County Rule 200, Section 305 (adopted 11/15/93 and as amended).

(~~43~~) Weed abatement operations performed on any vacant lot or property under the order of a governing agency for the control of a potential fire hazard or otherwise unhealthy condition provided that mowing, cutting, or another similar process is used to maintain weed stubble at least three inches above the soil surface.

(~~om~~) No person shall offer to sell or plant any mulberry tree (*morus alba*) or olive tree (*olea europea*) in the City unless it is one of the non-pollinating varieties of such trees. The City shall maintain a current list of non-pollinating varieties, which shall be available for public review and shall be based on industry standard for non-pollinating varieties, applicable horticultural and scientific research and data, review and evaluation by qualified experts, and other appropriate information.

(~~pn~~) It shall be unlawful for any owner or person having legal occupancy

of a residence or business to allow any swimming pool or ~~similar~~ body of water to stagnate and thereby become unsafe for its intended use through eutrophication or pollution. For purposes of this Subsection, "pollution" means a condition that exists in water and is characterized by bacterial growth, algae, insect infestation, the remains of litter, debris, garbage, or other foreign matter that, because of its nature or location, constitutes an unhealthy or unsafe condition.

(~~ge~~) No owner or occupant of a building, structure or land within the City shall permit or fail to eradicate graffiti, as defined in section 13-68 of this code, on any building, structure, wall, sidewalk, fence, sign or other surface visible from any street or other public or private property.

(~~pe~~) No owner or occupant of a vacant or abandoned building or structure within the City shall fail to secure the building or structure against unauthorized entry.

(~~se~~) It is unlawful for any person to cause or permit the handling, transporting or disposition of any substance or materials that are likely to be scattered by the air or wind, or is susceptible to being airborne or wind-borne, or operate or maintain or cause to be operated or maintained, any premise, open area, right of way, storage pile of materials, vehicle or construction, alteration, demolition or wrecking operation, or any other enterprise that involves any material or substance likely to be scattered by the wind or air or susceptible to being wind-borne or airborne that would be classified as air pollution or unreasonably interferes with the comfortable enjoyment of life or adjacent property. The In addition that a dust control permit may be required, the City may require reasonable precautions to prevent dust emissions prohibited under this section which may include but are not limited to the following:

(1) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, grading of roads, driveways, and parking lots or the clearing of land.

(2) Application and maintenance of asphalt, road oil, water or suitable chemicals on dirt roads, driveways and parking lots, material stockpiles and other surfaces that can be a source of airborne dust.

(3) Installation of hoods, fans and dust collectors to enclose and vent the handling of dusty materials or the use of water, sprays or other acceptable measures to suppress the dust emission during handling. Adequate containment methods shall be employed during sand blasting or other similar operations.

(~~tr~~) Decorations shall mean items or objects used to embellish, ornament or enhance any physical features on private property or buildings thereon in celebration of a holiday or occasion. Decorations shall meet the following requirements.

(1) Decorations shall not be displayed in such a manner that creates a traffic hazard on city streets, sidewalks, rights of way and other public accesses or to create an obstruction to pedestrian or vehicular traffic.

(2) Decorations containing electrical wiring shall be presumed to be hazardous if displayed for more than ~~120~~ 45 consecutive days and shall be subject to inspection by the City to determine the condition of the wiring. ~~Decorations containing electrical wiring deemed to be in a state of disrepair or hazardous by the city shall be removed immediately.~~

(us) All property shall be maintained from any conditions that contribute to blight, including but not limited to uses or activities customarily conducted or maintained out of public view, such as clothes lines, animal boarding facilities or other similar conditions. All dirt front yards visible from a private roadway or right of way shall be landscaped with rock or grass within sixty days following issuance of a final utility clearance by the City and be maintained continuously in such condition.

(vt) It shall be unlawful for any owner or occupant of any real property to conduct any sale of new or used merchandise on their property, including but not limited to yard sales, craft sales, garage sales or similar sales in violation of this section. For purposes of this section, "garage", "yard", "craft", or similar sale is defined as a sale of new or used personal property located on the property prior to the sale. ~~Such sales~~ Sales identified in this Subsection shall not ~~violate~~ be a violation any of if they meet the following:

(1) Held for a period of more than sixty (60) consecutive hours. It shall be presumed that the sale started at the time set forth on any advertisement located identifying the proposed sale.

(2) Held more than four times in a calendar or consecutive year. For purposes of measurement, a consecutive year begins on the earliest date on any advertisement located identifying the proposed date and runs for a period of 365 days following that date. This four time limitation shall apply to the location regardless of a change in owners or occupants during the one year period.

SECTION 4. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-4 pertaining to Public Nuisances; enforcement and which shall read as follows:

Sec. 17-4. Public Nuisances; enforcement.

(a) Unless expressly stated otherwise, violations of this chapter may be enforced alternatively by civil or criminal penalties. H, however, no person served with a notice charging a civil violation may be subject to a criminal charge arising out of the same offense. However, prior civil determinations of responsibility for the

same offense may be used to enhance penalties imposed upon a subsequent criminal conviction for an offense.

(b) Civil violations of this chapter shall be enforced as provided in Section 17-51 and Chapter 15 of this code.

(c) Criminal violations of this chapter shall be enforced as provided in Section 17-51 and pursuant to state statute.

(d) In addition to other enforcement actions that may be taken pursuant to this ~~Code~~, the City Manager or designee may issue an order of abatement pursuant to Section 17-59 of this code.

(e) Violations of this ~~OrdinanceChapter~~ are in addition to any other violation enumerated within the City ~~OrdinanceCode~~ or the City Code and in no way limits the penalties, actions or abatement procedures which may be taken by the City for any violation of this ~~OrdinanceChapter~~ which is also a violation of any other ~~ordinance or~~ Code provision of the City or statutes of the State.

SECTION 5. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-51 pertaining to Nuisance; enforcement; violation and penalties and which shall read as follows:

Sec. 17-51. Nuisance; enforcement; violation and penalties.

For purposes of this chapter, the owner of record as recorded in the Maricopa or Yavapai County Recorder's Office records of the property on which a violation of this ~~OrdinanceChapter~~ exists may be presumed to be a person having lawful Control over any building, structure or parcel of land. If more than one 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. There shall be a rebuttable presumption that any person residing on the property is doing so with the consent of the recorded owner and such persons shall be jointly liable with any owner for any violation of this Chapter.

(a) The remedies herein are cumulative and the City may proceed under one or more such remedies.

(b) ~~(1)~~ Any owner or responsible party, who causes, permits, facilitates, or aids or abets any violation of any provision of this Chapter or who fails to perform any act or duty required by the Chapter is may be subject to a civil sanction in accordance with a schedule adopted by the ~~Presiding Judge of Municipal Court.~~ ~~the minimum sanction shall not be less than two hundred dollars or more than two thousand five hundred dollars.~~ All surcharges imposed by this code shall be in addition to the civil sanction. ~~Any owner or responsible party who commits a second violation of this Chapter within thirty-six months of the commission of a prior violation of this Chapter shall be subject to a civil~~

~~sanction in accordance with a schedule adopted by the Presiding Judge of Municipal Court, the minimum sanction shall not be less than four hundred dollars. All surcharges imposed by this code shall be in addition to the civil sanction. Any owner or responsible party who commits a third violation of the Ordinance within thirty-six months of the commission of a violation of the Ordinance shall be subject to a civil sanction of not less than seven hundred and fifty dollars. All surcharges imposed by this code shall be in addition to the civil sanction.~~

~~(2) The thirty-six-month period provision of subsection B (1) of this section shall be calculated by the dates the violations were committed. The owner or responsible party shall receive the enhanced civil sanction upon a finding of responsibility for any violation of this Chapter which was committed within thirty-six months of the commission of another violation for which the owner or responsible party was convicted or found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal.~~

(c) (1) Any owner, responsible party, or other person having control over a structure or parcel of land who causes, permits, facilitates, or aids or abets any violation of any provision of the Chapter or who fails to perform any act or duty required by the Chapter is guilty of a Class 1 misdemeanor.

~~(2) Any person convicted of a violation of the Ordinance shall be sentenced to a fine of not less than two hundred dollars. Any person who is convicted of a second violation of the Ordinance committed within thirty-six months of a prior violation of the Ordinance shall be subject to a fine of not less than four hundred dollars. All surcharges imposed by this code shall be in addition to the civil sanction. Any person who is convicted of a third or subsequent violation of the Ordinance committed within thirty-six months of a prior violation of the Ordinance shall be subject to a fine of not less than seven hundred and fifty dollars. All surcharges imposed by this code shall be in addition to the civil sanction.~~

~~(3) The thirty-six-month period provision of subsection (c)(2) of this section shall be calculated by the dates the violations were committed. The owner or responsible party shall receive the enhanced fine upon a conviction of any violation of the Ordinance which was committed within thirty-six months of the commission of another violation for which the owner or responsible party was found responsible or convicted, irrespective of the order in which the violations occurred.~~

(d) Each day any violation of any provision of this Chapter or the failure to perform any act or duty required by this Chapter exists shall constitute a separate violation or offense.

(e) In addition to any other sanction or penalty authorized under subsections (b) and (c) of this section, the Court may issue an order permitting the City to abate the condition giving rise to the violation. The reasonable costs of any such abatement, plus a ten percent administrative fee, which shall not exceed one thousand dollars shall be the responsibility of the person found responsible or guilty of the violation and may be collected as provided in Section 17-53.

(f) It is an affirmative defense for an owner of record that any violation of this Chapter was caused by an act or acts of a lessee or tenant who was a lawful resident of the property having a right to be on the property on the date of violation alleged in the complaint and that the owner has no legal authority to compel the lessee or tenant to correct the violation. ~~No defense shall be asserted pursuant to this provision unless notice thereof is filed with the Peoria Municipal Court and provided to the Office of the City Attorney at least twenty days in advance of the date set for trial.~~

(g) If any owner or responsible party is adjudged guilty or responsible for a violation of this Chapter or Chapters ~~5~~ 18 and/or Chapter 9 of this code which caused or contributed to the necessity of an order to vacate a dwelling or dwelling unit being issued pursuant to Chapter ~~5~~ 18 or Chapter 9 of this Code, the court shall impose a fine or penalty, exclusive of surcharges, no less than the greater of two hundred dollars or the amount paid by any governmental agency to re-establish a household for any individuals or families residing in the dwelling or dwelling units ordered to be vacated. ~~In no event shall the maximum fine or penalty for a single offense or violation exceed two thousand five hundred dollars, exclusive of surcharges. In no case shall an owner or responsible party who falls within the provisions of this subsection be eligible for suspension or commutation of a sentence or penalty except in the case of a criminal offense such owner or responsible party is placed on probation with the condition that the minimum mandatory fine be paid.~~

Cross reference(s) -- Definitions and rules of construction generally, § 1-2.

SECTION 6. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-52 pertaining to Nuisance; jurisdiction of court and which shall read as follows:

Sec. 17-52. Nuisance; jurisdiction of court.

(a) Jurisdiction of all proceedings to enforce the provisions of this Chapter ~~shall~~ may be in the Municipal Court of the City of Peoria.

(b) The Municipal Court of the Ccity of Peoria shall have jurisdiction to

issue orders permitting the City to abate conditions that constitute a violation of this Chapter. The Municipal Court may retain jurisdiction over any matter to abate conditions that constitute a violation of this Chapter until the violation is abated in full.

State Law Reference, A.R.S. §13-1603--Criminal Littering.

SECTION 7. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-53 pertaining to Nuisance; civil penalties, lien enforcement and which shall read as follows:

Sec. 17-53. Nuisance; civil penalties, lien enforcement.

(a) If a property owner or responsible party has been previously assessed civil or criminal penalties under this Chapter and fails to comply with such assessment within thirty days, the City may correct or abate the condition as described in the determination by the Municipal Court or Hearing Officer. The City shall pay the cost and expense of such abatement from any appropriation made available for that purpose and shall certify a statement of account to the Finance Department who shall collect the amount due, together with interest at the rate established by law.

(b) Upon commencement of action on the property or after mailing the statement of account to the owner or responsible party, the City shall assess the property for the cost of work performed, including actual costs of any additional inspection and other incidental connected costs, and for associated legal costs for abatement or injunction and shall record such assessment with the County Recorder and pursue any or all means for recovery of cost if the assessment is not paid. If the assessment is paid, the City shall remove the assessment.

(c) In the event it is necessary to enforce the assessment by sale, the sale shall be made from a judgment of foreclosure and order of sale. The City shall have the right to enforce the assessment in the Superior Court of Maricopa or Yavapai County based on location of the property at any time after recording, but failure to enforce the assessment shall not affect its validity. The recorded assessment shall be prima facie evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the recording. Prior assessments or liens for the purposes provided for in the ~~Ordinance~~City Code shall not be a bar to a subsequent assessments or liens and any number of liens or assessments on the same parcel may be enforced in the same action.

(~~ed~~) The assessment shall constitute a first lien and is prior and superior to all other liens, obligations, mortgages, or other encumbrances, except liens for general taxes.

(~~fe~~) Any liens or assessments filed with the County Recorder pursuant to previous provisions of this ~~Ordinance~~Chapter or any similar ordinance shall remain in effect under the same terms and conditions that existed at the time of recording.

(gf) Upon Ten (10) calendar days notice, the City may dispose of any property or material removed from real property as the result of abatement in any manner, including but not limited to destruction.

SECTION 8. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-57 pertaining to Notice of violation; rubbish, trash, weeds, filth, debris, and dilapidated structures and which shall read as follows:

Sec. 17-57. Notice of violation; rubbish, trash, weeds, filth, debris, and dilapidated structures.

Upon reasonable belief that a violation of this chapter has occurred and rubbish, trash, weeds, or other accumulation of filth, debris, or dilapidated structures, including but not limited to accumulation of stagnant waters in swimming pools, spas and hot tubs constitute a hazard to public health and safety from buildings, grounds, lots, contiguous sidewalks, streets, and alleys, the city shall:

(a) Provide written notice that shall be served upon the owner, occupant or lessee by certified United States mail, or in person at their last known address, or at the address on file in the Maricopa County Treasurer's Office to which the most recent tax bill was mailed. If the owner does not reside upon the property, a copy of the notice shall be mailed to the owner by first class United States Mail to the owner's last known address, or may be served by any other means reasonably calculated to provide the owner with notice.

(b) The notice shall provide that the owner, occupant or lessee shall have thirty (30) days to remove any rubbish, trash, weeds, filth, debris, or litter or dilapidated structures, including but not limited to accumulation of stagnant waters in swimming pools, spas and hot tubs upon the property or adjacent sidewalks, streets and alleys and the estimated cost to the City for the removal.

(c) The notice shall provide that the owner, occupant or lessee shall have ten (10) days to appeal in writing the issuance of the notice to the City Council. The date of mailing of the appeal shall be the date of filing. All appeals shall specify the grounds for appeal. The appeal shall be filed with the City Clerk, together with the appeal fee provided in this code, failure to pay the required fee shall result in the appeal not being filed.

SECTION 9. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-58 pertaining to Appeals of notices of violation; rubbish, trash, weeds, filth, debris, and dilapidated structures and which shall read as follows:

Sec. 17-58. Appeals of notices of violation; rubbish, trash, weeds, filth, debris, and

dilapidated structures.

(a) The City Manager ~~may~~ shall delegate his authority to act as hearing officer for the City Council on appeals pursuant to Section 17-57 to a sales tax or other Hearing Officer appointed by the City. The ~~City Manager or other Hearing Officer~~ may exercise the power granted to the Council to compel the attendance of witnesses and to hear relevant evidence.

(b) The ~~City Manager or other Hearing Officer~~ shall hear the appeal within twenty (20) days after receipt and upon the conclusion of the hearing submit recommended findings and conclusions to the City Council. Written notice of the hearing shall be provided to the appropriate City departments and to the owner, occupant or lessee. The ~~City Manager or other Hearing Officer~~ shall recommend and the City Council shall determine, based upon a preponderance of the evidence, whether a violation of this chapter has occurred and whether rubbish, trash, weeds, or other accumulation of filth, debris, or dilapidated structures, including but not limited to accumulation of stagnant waters in swimming pools, spas and hot tubs constitute a hazard to public health and safety from buildings, grounds, lots, contiguous sidewalks, streets, and alleys. The City Council shall issue its findings in writing, upholding or reversing the notice of violation. The City Council shall not hold a second hearing to again consider the matter, but act on the recommendation of the ~~City Manager or other Hearing Officer~~. The decision of the City Council shall be final.

(c) If an appeal is not filed in accordance with this section, the City Manager ~~or other Hearing Officer~~ may issue an order of abatement upon the day following the last day to appeal a notice of violation. The order of abatement shall provide that the owner, occupant or lessee shall have the remainder of the thirty (30) day period provided for in the notice to remove rubbish, trash, weeds, filth, debris or litter from the subject property.

Charter reference(s) -- Assessments and liens authorized, art. I, § 3(4).

SECTION 10. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-60 Order of assessment and which shall read as follows:

Sec. 17-60. Order of assessment.

(a) Within five (5) days after the City, its employees or contractors have removed rubbish, trash, weeds, filth, debris or dilapidated structures, including but not limited to removal of stagnant waters in swimming pools, spas and hot tubs from any lot, parcel or tract pursuant to this ~~Ordinance~~ Chapter, the City shall issue a written order of assessment. The order shall list the common address, legal description and tax parcel number of the property. The order shall also list the actual cost of removal, the five percent (5%) surcharge levied by the City, and the total cost. The order shall indicate that the entire cost is due and payable in full within thirty (30) days from the date of issuance of the order, and that the

assessment will become delinquent on that date. The order shall be signed by the City Manager or his designee and shall be recorded in the office of the County Recorder.

(b) The order of assessment shall also contain the following notice in bold face print:

NOTICE: THIS ORDER OF ASSESSMENT PURSUANT TO A.R.S. §9-499 AND ARTICLE I, SECTION 3 (4) OF THE PEORIA CITY CHARTER SHALL CONSTITUTE A LIEN UPON THE PROPERTY DESCRIBED IN THIS ORDER IN FAVOR OF THE CITY OF PEORIA, ARIZONA. THE CITY MAY TAKE LEGAL ACTION TO FORECLOSE THE LIEN AND SELL THE PROPERTY DESCRIBED TO RECOVER THE COSTS INDICATED IN THE ORDER OF ASSESSMENT.

(c) The order of assessment shall indicate that the owner, lessee or occupant shall have ten (10) days from the date of issuance to appeal the amount of the assessment levied by the City. The date of mailing the order shall be the date of issuance. All appeals of orders of assessments shall be in writing and shall specify the grounds for appeal of the assessment. Only the amount of the assessment may be appealed. The appeal shall be filed with the appeal fee provided in this Code, and failure to pay the required fee shall result in the appeal not being filed.

(d) ~~The City Manager or other~~ Hearing Officer shall hear the appeal within fifteen (15) days after receipt and upon conclusion submit recommended findings and conclusions to the City Council. Written notice of the hearing shall be provided to the appropriate City departments and to the owner, occupant or lessee. ~~The City Manager~~Hearing Officer shall recommend and the City Council shall determine, based upon a preponderance of the evidence, whether the assessment was made in accordance with the provisions of this ~~Ordinance~~Chapter and whether the amount assessed actually covers the costs incurred by the City. The Council shall issue its findings in writing upholding or modifying the amount of assessment. The decision of the Council shall be final.

(e) The order of assessment shall provide that any delinquent assessments shall bear interest in the same manner as delinquent utility bills at a rate of twelve percent (12%).

(f) A prior assessment under this Chapter is not a bar to subsequent assessments under this Chapter and any number of liens imposed pursuant to this Chapter may be enforced in the same action.

SECTION 11. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-61 pertaining to Nuisance; abatements; assessments; lien enforcement and which shall read as follows:

Sec. 17-61. Nuisance; abatements; assessments; lien enforcement.

The Finance Department shall maintain a list of all delinquent assessments made pursuant to this ~~Ordinance~~Chapter.

(a) All assessments sixty (60) days delinquent shall be forwarded to the City Attorney for review. If the City Attorney determines that the value of the assessment(s), surcharges and interest, together with the value of all other liens having priority over the assessment, does not exceed the value of the property, the City Attorney may commence legal action to foreclose the lien and request the Superior Court to order the property sold and the proceeds used to pay off all liens having priority, the assessment, surcharges and interest.

(b) If the City Attorney or City Manager determines that the value of the assessment, surcharge and interest, together with the value of all other liens having priority over the assessment, exceeds the value of the property, the City Attorney need not commence legal action to foreclose the lien. The City Manager may negotiate on the City's behalf with parties holding liens which have priority on the property. Any agreement waiving part or all of an assessment, surcharge and interest shall be approved by the City Council.

(c) Upon payment in full of an assessment, surcharge and interest or upon waiving of an assessment, surcharge and interest in full by the City Council, the City shall record a notice of satisfaction of assessment in the Office of the County Recorder. The notice shall contain the name of the owner of the property, the tax parcel number, the common street address and the legal description of the property. The notice shall refer to the date of the order of assessment and the docket and page number in the Office of the County Recorder where such order is recorded.

SECTION 12. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-65 pertaining to Shopping Carts; definitions and which shall read as follows:

Sec. 17-65. Shopping Carts; definitions.

In this chapter, unless the context otherwise requires:

(a) "Actual Notice" is defined as oral or written notice delivered to the owner of the shopping cart or retailer at the address on their sales tax or business license on file with the City by any of the following means:

- (1) Personal service upon the location of the owner of the shopping cart or retailer. Personal service upon an employee of suitable age and discretion at such location is sufficient.
 - (2) Service by first class U.S. Mail or any recognized express delivery service upon the owner of the shopping cart or the retailer.
 - (3) Service by Facsimile to the Fax number of the owner of the shopping cart or the retailer.
 - (4) Service by Electronic Mail to the E-mail address of the owner of the shopping cart or the retailer.
 - (5) Service by posting the notice on the premises of the Owner of the shopping cart or the retailer.
- (b) It shall be presumed that the address on the sales tax or business licenses on file with the City is the address of the owner of the shopping cart or retailer, unless the owner or retailer notifies the City in writing of a different address.
- (c) "Business of shopping cart retrieval": ~~means~~ sSearching for, gathering and restoring possession to the owner or the owner's agent, for compensation or in expectation of compensation, of shopping carts located outside the premises or parking area of a retail establishment.
- (d) "Electronic Device": ~~means~~ a device using Radio Frequency Identification Devices or similar technology that is designed to prevent the Shopping Cart from being pushed and moved if removed from the premises of the Owner of the Shopping Cart or Retailer.
- (e) "Parking area": ~~means~~ a parking lot or other property provided by a retailer for use by a customer for parking any automobile or other vehicle.
- (f) "Possession": ~~means~~ bBeing in actual physical control of the shopping cart at the time of issuance of a citation or to permit the shopping cart to be located on property that the individual is the lawful owner, lessee or possessor of.
- (g) "Premises": ~~means~~ tThe designated premises of a retailer as set forth on the approved site plan on file with the city, together with parking areas as defined in this chapter.
- (h) "Restrictive Device": ~~means~~ sSome form of Electronic Device, locking mechanism, mechanical device or other device that interferes with operation and/or removal of the shopping card from the designated premises of the retailer.

(i) "Shopping cart": ~~means a~~ A basket that is mounted on wheels or a similar device that is generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

SECTION 13. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-66 pertaining to Shopping carts; restrictive devices required; violations; penalties and which shall read as follows:

Sec. 17-66. Shopping carts; restrictive devices required; violations; penalties.

(a) On or after January 1, 2008, any person, partnership, corporation or other legal entity commencing operation of a retail establishment on any premises within the City shall have all Shopping Carts, owned, leased or which they are in lawful possession of, continuously equipped with a Restrictive Device that prevents their removal from the premises. The Community Development Director or his designee shall not issue a Certificate of Occupancy for the premises without a certification from the owner that all Shopping Carts owned, leased or which they are in lawful possession of are so equipped. The City shall charge a fee for the certification as provided in this code.

(b) On or after January 1, 2013, any person, partnership, corporation or other legal entity operating a retail establishment on any premises within the City shall have all Shopping Carts, owned, leased or which they are in lawful possession of, continuously equipped with a Restrictive Device that prevents their removal from the premises. Each person, partnership, corporation or other legal entity operating a retail establishment on January 1, 2013 shall file a certification with the Community Development Director or his designee that all Shopping Carts owned, leased or which they are in lawful possession of are so equipped. The City shall charge a fee for the certification as provided in this code.

(c) As an alternative to subsection (b), any person, partnership, corporation or other legal entity operating a retail establishment within the City on or before January 1, 2008, or any entity that begins operating in an existing building or suite shall enter into a contract with a shopping cart retrieval service that complies with the provisions of Section 17-69 to recover shopping carts unlawfully removed from the premises of the retail establishment. In order to comply with this alternative, the contract shall meet all of the following;

(1) The contract must be in writing. A copy of the Contract shall be filed not less than annually with the City. If the retail establishment terminates an existing contract and enters into a new contract, the new contract must be filed with the City within thirty (30) days following entry into the Contract.

- (2) The shopping cart retrieval service that is a party to the Contract must hold a valid business license issued by this City.
 - (3) The contract with the shopping cart retrieval service must remain continuously in place. If the retail establishment does not have a contract that meets the requirements of this subsection for more than thirty (30) consecutive days, it shall immediately comply with the provisions of subsection (b)
 - (4) The retail establishment shall pay an annual fee of \$250.00 or such other amount as set in Chapter 2 of this code which shall be used to cover the City's costs in administrating this provision and removing any carts under the control of the retail establishment from any place within the City.
 - (5) The retailer shall continuously meet the requirements of section 17-68(a) of this code and have the name and phone number of the car retrieval service attached to all of the carts.
 - (6) The retail establishment shall be required to file the annual certificate of compliance required by subsection (b) and shall attach all required documents to indicate compliance with this subsection.
 - (7) In the event that 150 shopping carts under the control of a retail establishment using this section were logged as being collected, deposited and impounded with the City within one calendar year within a two consecutive year running period, the Community Development Director may order the retail establishment to comply with the provisions of subsection (b) and prohibit use of this alternative. For purposes of this subsection, impounded means that the shopping cart has been placed in a city controlled storage yard and the requisite notice provided to the owner.
- (d) Failure to equip a Shopping Cart with a Restrictive Device as provided in this section shall be a civil infraction. The Court shall impose a civil sanction of ~~not less than \$25.00~~ for each Shopping Cart that is not equipped with a Restrictive Device. Each failure to equip a Shopping Cart with a Restrictive Device shall be deemed a separate violation of this section. ~~For a second or subsequent violation of this subsection within Ninety Days following the First Violation, the Court shall impose a civil sanction of not less than \$50.00 for each Shopping Cart that is not equipped with a Restrictive Device.~~ It shall be presumed that all persons, partnerships, corporation of legal entities having control of shopping carts are subject to the provisions of this section. The burden of rebutting this presumption by compliance with the alternative contained in subsection (c) shall be on the legal entity having control of shopping carts.
- (e) Failure to file a certification with the City as required by this section shall be a class three (3) Misdemeanor. ~~The Court shall impose the filing fee,~~

~~together with a minimum sanction of Two Hundred and Fifty Dollars and order that the certification be filed or the terms of this code complied within ninety days.~~

SECTION 14. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-67 pertaining to Shopping carts; activities; prohibitions; notices; applicability; consent; presumption; violations and which shall read as follows:

Sec. 17-67. Shopping carts; activities; prohibitions; notices; applicability; consent; presumption; violations.

(a) A person shall not do any of the following with the intent to temporarily or permanently deprive the owner or retailer of possession of a shopping cart:

(1) Remove a shopping cart from the premises or parking area of a retail establishment.

(2) Be in possession of any shopping cart that has been removed from the premises or parking area of a retail establishment.

(3) Be in possession of any shopping cart with the serial numbers removed, obliterated or altered.

(4) Leave or abandon a shopping cart at a location other than the premises or parking area of the retail establishment.

(5) Alter, convert or tamper with a shopping cart, remove any part or portion of a shopping cart or remove, obliterate or alter serial numbers on a shopping cart, or obliterate or alter the name of the owner or remove, obliterate or alter any Restrictive Device that the Shopping Cart is equipped with.

(6) Be in possession of any shopping cart while that cart is not located on the premises or parking lot of a retail establishment.

(b) Each owner of a shopping cart or retailer shall post a notice in English and Spanish in the following format in a location on their premises reasonably accessible to the public as follows:

NOTICE: REMOVAL OF SHOPPING CARTS FROM THE PREMISES AND PARKING LOT OF THIS ESTABLISHMENT IS ILLEGAL AND VIOLATIONS MAY BE CHARGED AS CRIMINAL OFFENSE. PERSONS REMOVING SUCH CARTS MAY BE SUBJECT TO PENALTIES NOT TO EXCEED A FINE OF \$500.00 AND IMPRISONMENT FOR UP TO 30 DAYS IN JAIL.

(c) Each owner of a shopping cart or retailer shall place on each shopping cart in their control the name of their business, address and telephone number.

(d) On or after October 1, 2007, an owner of a shopping cart or retailer who certifies to the City that all of their shopping carts are equipped with a Restrictive Device to make the carts immobile if removed from the premises shall be exempt from subsections (b) and (c).

(e) An owner of a shopping cart or retailer shall only give consent in writing to the removal of a shopping cart from the premises or parking lot of their establishment. It shall be presumed as a matter of law that any person not having written consent other than the owner of the car or the retailer, in possession of a shopping cart located outside the premises of the owner or retailer has temporarily or permanently deprived the owner or retailer of possession of the shopping cart.

(f) This section does not apply to:

(1) The owner of a shopping cart or to a retailer or a retailer's agents, or employees.

(2) A customer of a retail establishment who has written consent from the owner of a shopping cart or a retailer to be in possession of the shopping cart or to remove the shopping cart from the premises or the parking area of the retail establishment

(3) An employee of the City designated to retrieve shopping carts.

~~(g) Violation of subsection (a) of this section is a class three (3) misdemeanor. Violation of subsection (b) shall be enforced by a civil penalty. The minimum civil penalty imposed by the Court shall not be less than one hundred (\$100.00) dollars.~~

SECTION 15. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-68 pertaining to Shopping carts; finding; impoundment of shopping carts by local agencies; conditions; emergencies; costs; fines; disposal of unclaimed carts; applicability and which shall read as follows:

Sec. 17-68. Shopping carts; finding; impoundment of shopping carts by local agencies; conditions; emergencies; costs; fines; disposal of unclaimed carts; applicability.

(a) A shopping cart that does not have any identification affixed to in accordance with Arizona Revised Statutes Section 44-1799.32 or Section 17-66 of this code is deemed a public nuisance and may be immediately and summarily abated by impoundment of the shopping cart. The City shall publish a notice one

time describing such carts in a newspaper of general circulation in the City. A shopping cart that is not reclaimed from the City within fifteen days (15) following publication of the notice of impound may be sold or otherwise disposed of by the City in the City's sole discretion.

(b) A shopping cart that has a sign affixed to it in accordance with Arizona Revised Statutes Section 44-1799.32 or Section 17-66 of this code may be impounded by the City provided all of the following conditions are met:

(1) The shopping cart is located outside the premises or parking area of a retail establishment. The parking area of a retail establishment located in a multi-store complex or shopping center includes the parking area used by the complex or center.

(2) The shopping cart is not retrieved within three business days after the date the owner of the shopping cart, or the owner's agent, receives actual notice from the city, town or county of the shopping cart's discovery and location.

(c) If the location of the shopping cart will impede emergency services, obstruct vehicle traffic or create a safety hazard to the public on a public right-of-way, the City may immediately retrieve the shopping cart from public or private property. It shall be presumed that a shopping cart blocking a sidewalk or bicycle path is a safety hazard to the public.

(d) The City shall recover its costs for impounding a shopping cart in the amount provided in Chapter 27, Fee Table 27-18 ~~17-68~~ of this code.

(e) The City shall post on its website, the address and telephone number of the location where shopping carts will be impounded by the City and the hours that the location is open for business.

(f) The owner of a shopping cart or retailer shall retrieve the shopping cart within one business day after receiving notice. The owner of a shopping cart or retailer who has had more than three occurrences of shopping carts being impounded and failing to retrieve the shopping cart within one business day after receiving notice, within a six month period shall be charged a civil penalty of fifty dollars (\$50.00) in addition to the impound fees. An occurrence includes all shopping carts impounded in accordance with this section in a one day period.

(g) A shopping cart that is not reclaimed from the City within thirty days after receipt of a notice of the impound by the owner of the shopping cart may be sold or otherwise disposed of by the City in the City's sole discretion.

(h) Notwithstanding subsection (b), paragraph 2 of this section, a city, town or county may impound a shopping cart that otherwise meets the criteria

prescribed in subsection (b), paragraph 1 of this section without complying with the three day advance notice requirement if all of the following apply:

- (1) The owner of the shopping cart or the owner's agent is provided with actual notice within twenty-four hours after the impound and that notice informs the owner or the owner's agent of the location where the shopping cart may be claimed.
- (2) The shopping cart is impounded at a location in compliance with subsection (e) of this section.
- (3) The shopping cart is reclaimed by the owner or the owner's agent within three business days after the date of actual notice as provided in paragraph 1 of this subsection and is released and surrendered to the owner or agent at no charge, including the waiver of any impound and storage fees or fines that would otherwise apply pursuant to subsection (d) or (f) of this section. Any cart reclaimed within the three business day period is not deemed an occurrence for purposes of subsection (f) of this section.
 - (i) Any shopping cart not reclaimed by the owner or the owner's agent after three business days after the date of actual notice as provided in subsections (b) and (h) of this section is subject to any applicable fee or fine imposed pursuant to subsection (d) or (f) of this section commencing on the fourth business day after the date of the notice.
 - (j) Any shopping cart not reclaimed by the owner or the owner's agent within thirty days after the date of actual notice as provided by subsection (h), paragraph 1 of this section may be sold or disposed of in accordance with subsection (g) of this section.
 - (k) On or after October 1, 2007, any owner of a shopping cart or retailer who has certified to the City that all of their shopping carts are equipped with a restrictive device to prevent removal from the premises of the owner or retailer shall be exempt from being charged any collection or impound fees for any carts collected by the City.

SECTION 16. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-72 pertaining to Smoking in enclosed public places; definitions and which shall read as follows:

Sec. 17-72. Smoking in enclosed public places; definitions.

(a) "Smoking" means inhaling, exhaling, burning, or carrying or possessing any lighted tobacco product, including cigars, cigarettes, pipe tobacco and any other lighted tobacco product or the inhaling, exhaling, burning, carrying or possessing Marijuana pursuant to a Medical Marijuana Card issued pursuant to

A.R.S. 36-2801, et seq.

(b) Prohibitions.

(1) Smoking is prohibited in rest rooms, public buses, the public areas of grocery stores, convenience markets, drugstores, pharmacies, and in waiting or checkout line areas within other enclosed public places. For purposes of this OrdinanceChapter, all rest rooms within an enclosed public place shall be deemed non-smoking.

(2) Smoking is prohibited in all other enclosed public places, except in a designated smoking area or as otherwise expressly provided in this OrdinanceChapter or state law.

(3) The provisions of this OrdinanceChapter shall not be construed to limit the ability of the owner, operator or manager of an enclosed public place or the employer to declare the whole or any portion of that enclosed public place or place of employment to be smoke free.

(4) Smoking in city-owned public places. All enclosed public places owned, controlled, occupied or managed by the city shall be subject to this OrdinanceChapter. Nothing in this Chapter shall restrict the City Manager from adopting more stringent standards governing smoking in city-owned public places pursuant to the City Charter.

(5) Private Residences that are used as a licensed child care, adult day care, or health care facility.

(6) Smoking of Medical Marijuana is prohibited in those areas of public and private parks containing playground equipment for use by children. Playground equipment includes swing sets; pull up and climbing bars; water features; cushioned play areas, skate board parks and skate areas and any other area designed for play by children. The play area shall include a buffer of fifty (50) feet from the actual play facilities.

(7) Smoking is prohibited in all public places as defined in Arizona Revised Statutes §36-601.01.A.9.

(8) Smoking is prohibited within fifty (50) feet of any entrance of a public place and within fifty (50) feet of any entrance of a licensed child care, adult day care or health care facility.

(c) Optional areas. Other provisions of this OrdinanceChapter to the contrary notwithstanding, the following areas shall not be subject to the smoking restrictions of this OrdinanceChapter:

(1) Private residences except as provided in subsections (b)(5),(8).

(2) Hotel and motel rooms rented to guests and designated as smoking rooms.

(3) Retail stores dealing exclusively in the sale of tobacco products and smoking paraphernalia, however, Medical Marijuana provided to a patient pursuant to a medical marijuana card may not be smoked in such retail stores.

(4) On-stage smoking as a part of a stage production, ballet or similar exhibition, however, Medical Marijuana provided to a patient pursuant to a medical marijuana card may not be smoked as part of a stage production, ballet or similar exhibition.

(5) Outdoor patios so long as tobacco or marijuana smoke does not enter areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.

(6) A private residence which serves as a work place or place of employment.

(7) Private clubs and private recreation facilities, however, Medical Marijuana provided to a patient pursuant to a medical marijuana card may not be smoked in such Private clubs and private recreation facilities.

SECTION 17. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-73 pertaining to Smoking in places of employment and which shall read as follows:

Sec. 17-73. Smoking in places of employment.

(a) For purposes of this chapter, places of employment shall be defined to include the following:

(1) Bars, Pool halls and bowling alleys; including those areas opened to the public.

(2) Hotel, motel and all other public and private conference/meeting rooms, while those places are being used for exclusively private functions.

(b) Each employer in each place of employment within the city shall adopt, implement and maintain a written smoking policy, which shall be posted in the same manner as other employment notices required by law and containing at a minimum the following provisions and requirements:

(1) Address the issue of smoking in employer conference and meeting rooms, classrooms, auditoriums, waiting areas, medical facilities,

hallways, stairways and elevators.

(2) Provision and maintenance of a physically separate and independently ventilated non-smoking area in restaurants, cafeterias, lunchrooms and employee lounges, located within a place of employment.

(c) Any employee may object to their employer about smoke in their immediate work area. The policy required by the preceding subsection shall include a reasonable definition of work area. Using already available means of ventilation or separation or partition of office space, the employer shall attempt to reach a reasonable accommodation insofar as possible, between the preferences of smoking and non-smoking employees. An employer is not required by this provision, however, to make any expenditures or structural changes to accommodate the preferences of smoking or non-smoking employees.

(d) If the employer can not reach an accommodation which is reasonably satisfactory to all effected non-smoking employees, the preferences of the non-smoking employee shall prevail to the extent it does not interfere with the normal operation of the employer's business. Where the employer prohibits smoking in a work area, it shall clearly mark that area with appropriate "no smoking" signs and, upon request, shall provide signs to employees for use in designating their areas.

(e) The employer shall make known its policies regarding smoking as required by this ~~Ordinance~~Chapter to all the employer's employees working in work places in the city and the employer shall post its written policies conspicuously in all work places under the employer's jurisdiction in the city.

(f) Any person or employer who owns, manages, operates or otherwise controls the use of any premises subject to this ~~Ordinance~~Chapter has the responsibility to properly:

(1) Designate in a conspicuous manner required "no smoking" areas.

(2) Post signs required by this subsection or elsewhere in this ~~Ordinance~~Chapter.

(g) "Smoking" or "no smoking" signs, as appropriate, or the international "no smoking " symbol consisting of a picture of a burning cigarette inside a red circle with a red bar diagonally across it shall be clearly and conspicuously posted by the owner, operator, manager, employer or other person in control in every place where smoking is controlled by this ~~Ordinance~~Chapter.

(1) In those places of employment containing a bar or restaurant, the owner, manager or operator shall post a smoking compliance sign in a form provided by the City at the entrance of the facility that visible to any code

compliance or peace officer who inspects the location.

(h) Owner, manager, operator or employee of any establishment to which this ~~Ordinance~~Chapter applies shall, upon either observing or being advised of a violation of sections 17-71 through 17-75 have the obligation to inform the violator of the requirements of this ~~Ordinance~~Chapter and request their immediate compliance. Should a person continue to violate any of sections 17-71 – 17-75 of this code, the Owner, manager, operator or employee of any establishment to which any of sections 17-71 – 17-75 apply may request the person to leave the premises. Should a person remain on the premises after such a request from the owner, manager, operator or employee of any establishment, there shall be a rebuttable presumption that the person is remaining unlawfully upon the property.

SECTION 18. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-74 pertaining to Smoking; restaurants; bars, exemptions and which shall read as follows:

Sec. 17-74. Smoking; restaurants; bars, exemptions.

(a) No smoking shall be permitted in restaurants and bars, except as expressly provided in this ~~Ordinance~~Chapter.

(b) Any restaurant and/or bar having received a temporary or final certificate of occupancy on or after March 1, 2004 regardless of whether it contains an area designated for the serving of alcohol by the drink shall not permit smoking inside the restaurant., except as provided by this section.

(1) Smoking may be permitted in outside patio areas covered by a roof, but not enclosed.

(2) Any restaurant having received a temporary or final certificate of occupancy prior to March 1, 2004, may permit smoking in an accessory bar or room that is physically separated from the restaurant and independently ventilated from smoke free areas. The Building Official may adopt standards consistent with adopted building codes to accomplish this goal. Such accessory bar areas or rooms may not be located in such a manner as to require non-smoking customers to walk through the area to reach the non-smoking areas.

(3) All entry lobby areas, waiting areas, restrooms and areas within fifteen (15) feet of the entrance shall be designated as smoke free.

(4) 4.—Restaurants and bars which were closed for a period of one consecutive year or more prior to the date of reopening and reopened after March 1, 2004 shall comply with this section.

(5) 5.—Restaurants having received a temporary or final certificate of

occupancy on or after January 1, 2004 shall not permit smoking in any accessory bar or room area, regardless of physical separation and independent ventilation.

(c) A restaurant having received a temporary or final certificate of occupancy prior to March 1, 2004 may permit smoking within a designated area subject to the provisions of this subsection. On or before December 31, 2004, restaurants shall permit smoking only:

(1) Smoking may be permitted in outside patio areas covered by a roof, but not enclosed.

(2) In an accessory bar or room that is physically separated from the smoke free areas and independently ventilated from smoke free areas. The Building Official may adopt standards consistent with adopted building codes to accomplish this goal. Such smoking area may not be located in such a manner as to require non-smoking customers to walk through the area to reach the non-smoking areas.

(d) All entry lobby areas, including but not limited to within fifteen feet of the entrance, waiting areas and restrooms shall be designated as smoke free.

(e) All restaurants shall conspicuously post notices at all public entrances indicating whether smoking is permitted in a designated area. All restaurants shall conspicuously post a notice provided by the City at their main public entrance indicating the status of compliance with the provisions of sections 17-71 – 17-75 of this code.

(f) All Bars for which a certificate of occupancy was issued prior to March 1, 2004 shall be subject to the provisions of Sections 17-71 through 17-73 of this Chapter.

(g) The owner of any restaurant for which a temporary or final certificate of occupancy was issued prior to March 1, 2004 may apply for a one (1) year exemption to make the improvements required by this Section. The application shall be filed with the Building Official of the City. The improvements required by this section shall be made within the one-year period unless a request for a hardship exemption is filed under this section.

(h) The owner of any restaurant for which a certificate of occupancy was Issued prior to March 1, 2004 and for which a one-year exemption was issued by the Building Official may file for a hardship exemption at the end of the one-year exemption period. The hardship exemption shall be for a period of Five (5) years and shall expire upon the end of the five-year period of upon the owner making improvements greater than 25% of the Value of the building.

(1) The City Manager shall develop a grant program subject to the appropriation of funds by the Council through the annual budget process to award grants to businesses requesting financial assistance to pay the cost of compliance with the new requirements of this OrdinanceChapter. Such grants shall be available only to those businesses requesting a hardship exemption under this section.

SECTION 19. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 20. This Ordinance shall become effective in the manner provided by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this 13th day of June, 2017.

Dated: 6/20/17

Cathy Carlat
Cathy Carlat, Mayor

ATTEST:

Rhonda Geriminsky
Rhonda Geriminsky, City Clerk



APPROVED AS TO FORM:

Stephen J. Burg
Stephen J. Burg, City Attorney

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