

MARANA ORDINANCE NO. 2021.025

RELATING TO PUBLIC NUISANCE AND PROPERTY PRESERVATION; AMENDING THE MARANA TOWN CODE BY ADOPTING NEW TITLE 18 ENTITLED PUBLIC NUISANCE AND PROPERTY PRESERVATION ESTABLISHING PUBLIC NUISANCE AND PROPERTY PRESERVATION STANDARDS FOR THE HEALTH AND SAFETY OF THE CITIZENS OF THE TOWN OF MARANA; DEFINING AND ESTABLISHING PENALTIES FOR VIOLATIONS AND PROVIDING FOR ENFORCEMENT PROCEDURES; DELETING MARANA TOWN CODE CHAPTER 10-2 (MAINTENANCE OF PROPERTY), CHAPTER 11-7 (STORAGE OF INOPERABLE OR JUNKED VEHICLE), SECTION 11-3-3 (GRAFFITI PROHIBITED; ABATEMENT PROCEDURES; PENALTY), AND SECTION 10-1-4 (ILLEGAL DUMPING; CLASSIFICATION); AND DESIGNATING AN EFFECTIVE DATE

WHEREAS pursuant to A.R.S. § 9-499, the Town of Marana may enact laws regulating properties whose condition is hazardous to public health and safety; and

WHEREAS the Mayor and Council of the Town of Marana find that the adoption of new Title 18 (Public Nuisance and Property Preservation) is in the best interests of the Town of Marana and the general public.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, as follows:

SECTION 1. The Marana Town Code is hereby amended to add new Title 18 entitled Public Nuisance and Property Preservation, one paper copy and one electronic copy of which are on file in the office of the Town Clerk, which was made a public record by and attached as Exhibit A to Resolution No. 2021-147 of the Town of Marana, Arizona, and which is hereby referred to, adopted and made a part of this ordinance as if fully set out here.

SECTION 2. The following penalty clauses are included in Marana Town Code Title 18 (Public Nuisance and Property Preservation) as adopted pursuant to this ordinance:

18-4-2 Each day separate violation

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

18-5-3 Enforcement options

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

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

18-5-4 Misdemeanor violations

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

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

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

18-5-8 Civil complaints

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

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

C The town shall attempt to hand deliver the civil citation to the person accused of violating this Code. If the town is unable to hand deliver the civil citation, the town may serve it by certified or registered mail, return receipt requested, or by any means allowed by the Arizona Rules of Civil

Procedure, to include alternative service methods approved by the court. If the town sends a citation via certified or registered mail, an additional copy must also be sent by regular mail.

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

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

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

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

18-5-10 Authority to issue criminal complaints

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

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

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

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

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

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

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

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

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

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

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

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

18-5-14 Civil penalties

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

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

18-5-15 Criminal penalties

A. The criminal penalty may be determined by the court, by plea

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

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

18-5-16 Additional fees

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

18-5-17 Notice to abate

A. If, after an inspection, the town finds one or more violations of this title, the town may require correction of the violation(s). If the town requires correction, the town may issue a notice to abate to the owner, the owner's authorized agent or the owner's statutory agent, and the occupant or lessee.

B. The notice to abate shall be in writing and shall set forth:

1. The identification of the land where the violation is located, by legal description, including the street address, if known, or by book, map and parcel number, if the street address is unknown.

2. A statement of the violation(s) in sufficient detail to allow a reasonable person to identify and correct the violation(s).

3. The date by which the owner, the owner's authorized agent, the owner's statutory agent, the occupant or lessee shall correct the violation, which date shall not be less than 30 days from service of the notice.

4. The name and phone number of the inspector who sent the notice.

5. The estimated cost of abatement to the town.

6. If the violation(s) is not corrected by the date specified for abatement, the town may abate the violation(s), assess the owner, occupant and/or the lessee the cost of abatement, and record a lien on the land for the assessment.

7. The appeal procedures, if any.

18-5-19 Effect of notice to abate

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

18-5-20 Town may abate

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

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

18-5-21 Town assessment for abatement

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

18-5-22 Assessment lien

- A. The town's statement of cost under section 18-5-21 above shall be:
 - 1. An assessment on the land from which the town abated the

violation(s), and

2 Collected at the same time and in the same manner as other town assessments are collected.

B. The town shall record the assessment in the Pima County Recorder's Office. From the date of its recording, the assessment shall be a lien on the land.

C. The lien shall be inferior only to general tax liens.

D. After recording the lien, the town may institute an action to enforce the lien in the superior court for Pima County. The recorded assessment is prima facie evidence of the truth of all matters recited in the assessment and the regularity of all proceedings before the recordation. Upon judgement of foreclosure and order of sale, the town shall sell the land to satisfy the lien.

E. A prior assessment under this section is not a bar to a later assessment. Any number of liens on the same land may be enforced in the same action.

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

18-5-23 Emergency abatement

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

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

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

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

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

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

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

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

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

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

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

A If the owner, the owner's managing agent or any other person responsible for the use of the building or land for criminal activity fails to correct the nuisance, the town may:

1. Abate the use of the building or land for criminal activity.
2. Bring an action in Superior Court to abate the use of the building or land for criminal activity.

B If the court enters a temporary restraining order, the town shall serve upon the defendant(s), any applicable statutory agent, and any legal occupant the town believes may claim an interest in the building or land:

1. Notice of the entry of the temporary restraining order,
2. Copies of the temporary restraining order and the complaint, and
3. Notice of the possibility for a hearing, which shall be in substantial conformance with the state statutes.

C The service of the documents set forth in subsection B of this section shall be in conformance with state statutes.

18-5-26 Town recordation of action

A If the town brings an action to abate the use of a building or land for criminal activity, the town shall file a notice of the action in the Pima County Recorder's Office.

B The notice shall be in conformance with state statutes.

18-5-27 Assessment for abatement regarding criminal activity

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

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

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

SECTION 3. The various town officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 4. The Marana Town Code is hereby amended by deleting the following portions of the Code: Marana Town Code Chapter 10-2 (Maintenance of Property), Chapter 11-7 (Storage of Inoperable or Junked Vehicle), Section 11-3-3 (Graffiti Prohibited; Abatement Procedures; Penalty), and Section 10-1-4 (Illegal Dumping; Classification).

SECTION 5. All ordinances, resolutions, or motions and parts of ordinances, resolutions, or motions of the Council in conflict with the provisions of this ordinance are hereby repealed, effective as of the effective date of this ordinance; provided, however, that this repeal shall not affect the rights and duties that matured or penalties that were incurred and proceedings that were begun before the effective date of the repeal.

SECTION 6. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 7. This ordinance is effective on the 31st day after its adoption.

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



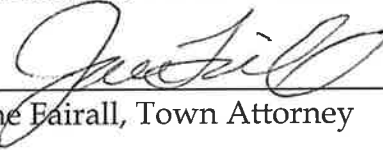
Mayor Ed Honea

ATTEST:



Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:



Jane Fairall, Town Attorney

