

ORDINANCE 618

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AMENDING THE BENSON CITY CODE BY REPEALING AND REPLACING THE EXISTING CODE CHAPTER 9, "HEALTH AND SAFETY," ARTICLE 2, "PUBLIC NUISANCES AND PROPERTY MANAGEMENT"

WHEREAS Section 9-499 of the Arizona Revised Statutes directs Arizona municipalities to adopt regulations requiring that private property owners maintain their respective properties in a manner that promotes the general health and safety of residents; and

WHEREAS the Mayor and Council of the City of Benson previously adopted regulations proscribing standards within which private property owners within the City are required to maintain their respective properties, including Chapter 9, "Health And Safety," Article 2, "Public Nuisances And Property Management"; and

WHEREAS the Mayor and Council have amended the Benson City Code from time to time as is their right; and

WHEREAS the Mayor and Council have identified updates to Benson City Code Chapter intended to provide City officials with additional avenues for enforcement, including to permit PD to issue citations for required maintenance; and

WHEREAS the Mayor and Council hereby determine that in order to promote and improve the general health, safety, and welfare of City residents, it is in the best interests of the residents of the City residents surrounding the City that these changes and each of them be approved; and

WHEREAS the proposed code changes have been declared a public record under Mayor and Council Resolution 35-2022.

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA:

SECTION 1: Three (3) copies of the document entitled Chapter 9, "Health And Safety," Article 2, "Public Nuisances And Property Management" is file in the office of the City Clerk of the City of Benson, Arizona, have all been made public records by Resolution 35-2022 of the City of Benson, Arizona, and are hereby adopted, passed and approved by reference and made a part hereof as if fully set forth in this Ordinance.

SECTION 2: The previously existing Article 9-2 of the Benson City Code is repealed as of the effective date of this Ordinance.

SECTION 3: The material penalty provisions of this Ordinance, in addition to those set forth in Benson City Code Article 1-8(A), are as follows:

Section 9-2-5 AUTHORITY TO ENFORCE

(E) Any person who neglects, fails or refuses to correct the violations contained within [a] notice [issued under Benson City Code Article 9-2] or other similar device issued pursuant to this article may be assessed a reinspection fee for inspections that occur after the compliance date. Reinspection fees, as established by a separate council resolution, may be collected as a lien against the real property.

Section 9-2-13 EMERGENCY ABATEMENT OF NUISANCE

When any owner, agent, occupant, or tenant of any building, grounds, or property within the City, neglects, fails, or refuses to abate or correct a violation of this article for more than thirty (30) days from the effective date of the notice to abate, the building official or his designee, in conjunction with the filing of any criminal complaint, may petition the City of Benson Magistrate Court for an Emergency Order of Abatement and if granted, immediately abate such violation at the expense of such owner, agent, occupant or tenant.

Sec. 9-2-14 LIEN TO COVER ABATEMENT COSTS

A. Abatement by City; Expense Statement:

The building official, his or her designee, or authorized representative shall prepare a verified statement and account of all the expenses incurred by the City or occasioned by, or incidental to, such abatement and file such verified statement and account with the City Clerk or his or her designee. The verified statement shall include an administration charge with the cost of recording liens and releases thereof.

B. Assessment of City Abatement Costs:

(1) After filing the verified statement and accounting as set forth, the building official or his or her designee shall prepare certified copies of the Notice of Lien and record one (1) certified copy with the office of the Cochise County Recorder and within in five (5) business days thereafter serve by personal service or by certified mail one (1) certified copy of such Notice of Lien upon the owner, occupant, agent or tenant of the building, grounds or premises and one (1) certified copy of such Notice of Lien to any party who may qualify as an interested party by reason of holding an interest in the property as a lien, obligation, mortgage or other encumbrance.

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(3) From and after the date of recording such Notice of Lien with the County Recorder, all expenses incurred in connection with or incidental to such abatement and as

fixed and determined by such verified statement and account are hereby declared as a lien upon such buildings, grounds, and premises and shall be charged and assessed upon and against such buildings, grounds, and premises.

(4) The recorded lien shall bear interest at the legal rate for judgments in the State of Arizona from the date that the lien is recorded until it is paid in full.

(5) Any assessments recorded after July 15, 1996, are prior and superior to all other liens, obligations, mortgages, or other encumbrances except liens for general taxes.
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Sec. 9-2-17 INTERFERENCE WITH ABATEMENT OR OTHER ENFORCEMENT PROCEDURE

Any person who interferes, prevents, or attempts to interfere, or prevents an individual employed by the City of Benson or other person contracted for by the City from investigating an alleged violation of this article or from correcting or abating a violation of this Article shall be guilty of a Class One (1) Misdemeanor.

Sec. 9-2-18 GIVING FALSE INFORMATION TO ENFORCEMENT PERSONNEL

Any person who knowingly makes a false or fraudulent statement, or knowingly misrepresents a fact, or misleads an individual employed by the City of Benson or other person contracted for by the City, when that individual is investigating, correcting, or abating a violation of this article, is guilty of a Class One (1) Misdemeanor and the Building Official is authorized to commence an action under this section by issuing a criminal complaint in the City of Benson Magistrate Court.

Sec. 9-2-19 CRIMINAL PENALTIES; RESTITUTION

A. Criminal penalties.

(1) A person who is convicted of a violation of this article is guilty of a Class One (1) Misdemeanor and shall be sentenced to a fine of not less than \$500.00 and probation for not less than six (6) months for a first conviction. A person who is convicted of a subsequent violation of this article within two years of a first conviction is guilty of a Class One (1) Misdemeanor and shall be sentenced to a fine of not less than \$1000.00 and probation for not less than nine (9) months for the second and any subsequent conviction. The City Magistrate shall not suspend any or all of the impositions or execution of the sentence required by this section.

(2) Notwithstanding subsection (1) of this section, if the City Magistrate finds at the time of sentencing, and by a preponderance of the evidence, that the violation the defendant was convicted of has been corrected and that the defendant is now in compliance with this Article, the court may:

(a) Sentence the defendant to pay a fine of not less than \$100.00; and

(b) Suspend all or part of the probation.

B. Restitution. In addition to any sanction or penalty provided for in divisions (A) and (B) of this subsection, the person shall be liable for all costs which may be associated with the City's bringing the property into compliance with this article. The City Magistrate may impose restitution as part of a civil sentence or criminal sentence.

SECTION 4: All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the public record adopted by reference are hereby repealed.

SECTION 5: If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the public record adopted herein by reference 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 portion thereof.

SECTION 6: Pursuant to A.R.S. §9-812 and §39-204, the City Clerk is directed to publish the text of this Ordinance for two (2) consecutive weeks in a newspaper of general circulation and, further, to post a copy of this Ordinance in three (3) or more public places within the City.


PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, this 12th day of December, 2022.


JOE A. KONRAD, Mayor

ATTEST:


VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:


DeCONCINI McDONALD YETWIN & LACY, PC
By Paul A. Loucks
City's Attorney