City of Benson
City Council Communication

Worksession **February 10, 2014**

To: Mayor and Council Agenda Item # 1

From: Luis Garcia Jr., CBO Building Official/Zoning Administrator

Subject:

Worksession for Benson City Code Chapter 9

Discussion:

It was identified at the Benson City Council meeting on January 27th that the Benson City Code Chapter 9 needed to be reviewed and possibly updated. Staff is prepared to review in a section by section basis according to Council pleasure to satisfy this review.

Following the worksession, Staff will consolidate comments and update Chapter 9 accordingly.

Staff Recommendation:

Council pleasure

CITY OF BENSON
INTEROFFICE MEMORANDUM

DATE: **February 4, 2014**

TO: **Honorable Mayor and Council**

FROM: **Luis Garcia, CBO, CSBA - Building Official/Zoning Administrator**

SUBJECT: **City Code Update Worksession**

At the community forum that Staff participated in late last year, Chapter 9 (Section 9-2) was discussed. The following items were the focus of the meeting:

1. A review of "what constitutes a nuisance"? *This question came up many times during the night, but there was no resolution. Many times it was mistaken for the Building Code.*

2. The addition of a Hearing Officer(s) ahead of filing a complaint in City Court.

In addition to the items identified at the community forum, Staff would like to address the following items:

1. The addition of "responsible party" in all sections. *There are many times when Staff is faced with a tenant who is causing the violation to occur. The property owner may not be able to be located; therefore, the addition of a responsible party may alleviate this discrepancy.*

2. Means of notification. *In many other jurisdictions, Staff is able to physically post the property in an effort to place the owner on notice of a violation. This technique is used after contact by certified mail has failed.*

3. Codification of penalties correlating the Building Safety Codes with the City Code.

CC: Brad Hamilton, Interim City Manager/Public Works Director/City Engineer
Vicki Vivian, City Clerk

CHAPTER 9 HEALTH AND SANITATION

ARTICLE 9-1 SOLID WASTE COLLECTION AND DISPOSAL

9-1-1 Definitions
9-1-2 Rates
9-1-3 Garbage Containers
9-1-4 Responsible Authority
9-1-5 Authority to Classify and Assess
9-1-6 Enforcement and Administration
9-1-7 Solid Waste Collection System
9-1-8 Collection - Business Houses
9-1-9 Disposal Site; Rules and Regulations
9-1-10 Inspection
9-1-11 Prohibited Acts
9-1-12 Annual Review and Notification

Section 9-1-1 Definitions

In this article unless the context otherwise requires:

A. "Collector" means the city or its authorized representative including a contract collection service, assigned the task of the collection of solid waste within the city.

B. "Commercial" means contributors who occupy a single business location and who could or do place their normal refuse in individual containers, so constructed that require the removal of the refuse from the container rather than the dumping of the container itself. Commercial is considered any customer who cannot be classified as residential or general business and comprises mobile home parks, apartments, hotels, motels and other multi-residential activities of more than one dwelling unit under a common roof and comprises all businesses, commercial, institutional, governmental and similar activities.

C. "Contributor" means all owners, agents or tenants of properties within the city who generate solid waste. Each contributor is considered a separate account and assessed all required charges.

D. "Dwelling unit" means any residential building structure or portion thereof, whether it be attached or under common roof, which serves the purpose of providing private living quarters for more than one person comprising a family. Each dwelling unit is considered a separate residential contributor for the purpose of assigning charges. Each dwelling unit shall be allowed three containers.

E. "General business" means contributors who occupy a single business location and who could or do place their solid waste in individual containers, weighing less than fifty pounds, providing, however, that their normal refuse can be placed in not more than three containers for pick up, not more than twice per week.

F. "Owner and occupant" means every person in possession, charge or in control of any dwelling, flat, rooming house or any eating place, shop, place of business or business establishment, where garbage or other refuse is created or accumulated.

G. "Residential" means contributors who live in a dwelling unit and who could or do place their normal solid waste in individual containers, weighing less than fifty pounds. Buildings having more than one unit under a common roof are not considered residential.

H. "Solid waste" means all food putrescible waste, except sewage and body waste, including waste accumulated of animal or vegetable matter, and including meat, fish, fowl, fruit and vegetable and shall include all such waste, accumulations of vegetable matter of residents, restaurants, hotels and places where food is prepared for human consumption. It shall also include tin cans and bottles but shall not include recognized industrial by-products.

Section 9-1-2 Rates[1]

A. To assure the public health, safety and welfare of its citizens, a refuse service disposal charge shall be assessed by the council and collected from all owners, agents or tenants of developed properties located within the city.

B. There shall be an assessment monthly or any portion of a month solid waste charge for each residential dwelling.

C. There shall be an assessment monthly or any portion of a month solid waste charge for each general business contributor.

D. There shall be a monthly or any portion of a month solid waste charge for each commercial contributor. The charge shall be based on the total direct and indirect cost of providing service, and charges to be assessed to defray such cost shall be computed by the staff and adopted by the council.

E. Rental rates for containers used by commercial customers shall be determined by the collection service company which owns the containers subject to approval by the mayor and city council.

Section 9-1-3 Garbage Containers

A. City residents may only use refuse containers supplied by, or acceptable to, the city collection service company. Containers, which are not acceptable to the collector, shall be deemed unfit for use and may, at the collector=s option, be picked up and disposed of as refuse. Refusal to use the collector=s approved containers shall constitute a violation of this section and may subject the violator to a civil penalty of twenty-five dollars ($25.00) for each day the violation continues in addition to any other costs incurred by the city or the collector as a result of said action.

B. Any garbage, in or on any building or premises within the city, shall be collected and disposed of by the individual property owner or by the tenant, if rented or leased, responsible for cleanliness of the area by placing the garbage or trash in the refuse containers provided for that purpose. The refuse containers shall at all times be kept covered so as to exclude

[1]Modified by Ordinance No. 296

flies or other insects and so as to be in as nearly an airtight condition as possible. Refuse containers shall be washed as often as necessary to keep them clean, and a disinfectant shall be used in the containers during fly season.

Section 9-1-4 Responsible Authority

This article shall be enforced by the police department and any person who shall be specifically appointed for such purpose by the city manager. All persons enforcing this article shall work under the direction of the council and in coordination with the Arizona Department of Health Services or their authorized representative.

Section 9-1-5 Authority to Classify and Assess

The city manager shall have final authority to recommend, subject to appeal to the council, in all matters regarding the classification or re-evaluation of contributors or subscribers and the proper assignment of charges thereto. All contributors or subscribers shall be classified and assigned in accordance with the equitable distribution of costs as prescribed herein. Whenever a contributor cannot be properly placed in a prescribed standard classification category due to a special circumstance outside the bounds of the parameters used to establish the standard classification categories contained herein, they shall be considered a special classification and the general services supervisor shall calculate a special assessment based on the concepts used in distributing costs in an equitable manner, to all those who benefit from the solid waste services provided.

Section 9-1-6 Enforcement and Administration

A. It is unlawful for any person, firm or corporation to knowingly or intentionally violate the terms and conditions set forth in this article or fail to pay all proper assessments, fees and charges prescribed herein.

B. No certification of occupancy shall be issued by the building official of the city in applicable cases, until he shall have ascertained that an application and contractual agreement for sanitary enterprise services has been duly executed by the owner, agent or applicant. The city building official shall, in applicable cases, advise all applicants for certification of occupancy in writing of appropriate form and content of the requirements for execution of said contractual agreement.

C. The city manager shall be responsible for the enforcement and administration of all provisions of this article unless otherwise designated herein.

Section 9-1-7 Solid Waste Collection System

A. There is hereby established a system of refuse collection, transportation and disposal. It is unlawful for any person to engage in the business of collecting, transporting, hauling or

conveying any refuse over the streets or alleys of the city or to dump or dispose of the same except the city or its authorized representatives.

B. Every owner and occupant of premises within the prescribed limits of this article shall use the refuse collection and disposal system herein provided, and shall deposit or cause to be deposited in accordance with this article, all rubbish and garbage that is of such nature, that is perishable or may decompose, or may be scattered by wind or otherwise, which is accumulated on such premises.

Section 9-1-8 Collection - Business Houses

A. To ensure the health of the inhabitants of the city, the council hereby ordains that premises and businesses, such as, but not limited to, restaurants, grocery stores, hospitals, butcher shops and establishments, wherein large accumulations of garbage occur, are nuisances to the extent that the same should be and are hereby, in the manner and method hereinafter provided, designated as a separate class of premises for the collection and disposal of garbage and rubbish, and the same shall be deposited separately in suitable approved refuse containers.

B. The city may enter into a contract for the collection of such garbage or other refuse. It is unlawful for any person, except the collector, to collect or to haul or transport garbage or other refuse from any premises so designated under the provisions of this article.

C. All garbage or refuse shall be collected as deemed necessary by the council and at periods designated by the council.

Section 9-1-9 Disposal Site; Rules and Regulations

A. For the purpose of the protection and preservation of the health and welfare of the inhabitants of the city, it is hereby established that the place for the dumping and depositing of refuse and garbage shall be the Cochise County solid waste disposal transfer station located at 980 North Madison Avenue within the city and use of any other site within the city shall constitute unlawful dumping.

B. The rules and regulations governing use of the city disposal site shall be those established by the Cochise County solid waste disposal department.

Section 9-1-10 Inspection

No person shall deny the police officers or other inspection officer the right of ingress or egress to any premises for the purpose of inspecting all places and containers where rubbish or garbage is accumulated or kept.

Section 9-1-11 Prohibited Acts

A. It is unlawful for any person to permit or to suffer to accumulate in or about any yard, lot, place or premise, or upon any street, alley or sidewalk adjacent to such lot, yard, place or premise, owned or occupied by such person, any garbage or refuse so as to cause such yard, lot, premise or the street, alley or sidewalk adjacent thereto, to be or remain in such condition as to cause or create a nuisance of offensive odor or atmosphere, or thereby to become or cause or create a public nuisance.

B. No person shall burn, incinerate (except with special permit issued by the Arizona Department of Health Services and notification given to the police department), bury, dump, collect, remove or in any other manner, dispose of rubbish, garbage (except with special permit) within the limits of the city.

C. No person shall throw, discard or deposit any rubbish, garbage or refuse in or upon any street, alley, sidewalk or vacant ground, or in or upon any canal, irrigation ditch, drainage ditch or other watercourse.

Section 9-1-12 Annual Review and Notification

A. A review of the solid waste collection and disposal costs and amounts charged users shall be made annually as part of the budgeting process.

B. Revision to the user class or user rate charges as may be approved by resolution of the city council shall be made in order to accomplish the following:

1. Maintain the proportionate distribution of operation and maintenance costs among users and users classes;

2. Generate sufficient revenue to pay not less than the total cost of collection, disposal and administrative overhead assigned for the function.

C. Each user shall be notified annually of the rate or rate changes which are attributable to the solid waste services in conjunction with a regular bill.

HEALTH AND SANITATION

ARTICLE 9-2 PUBLIC NUISANCES AND PROPERTY MAINTENANCE [1]

9-2-1 Purpose
9-2-2 Definitions
9-2-3 Authority to Enforce
9-2-4 Inspections
9-2-5 Litter on Public Place or Private Property Prohibited
9-2-6 Public Nuisances Prohibited; Owner to Maintain Premises and Contiguous Areas
9-2-7 Notice of Nuisance or Violation of Litter Control
9-2-8 Request for Time Extension of Notice to Abate
9-2-9 City Abatement of Nuisance or Litter Control Violation
9-2-10 Lien to Cover City Abatement Costs
9-2-11 Violations Not Exclusive; Each Day a Separate Violation
9-2-12 Enforcement Jurisdiction of City
9-2-13 Option to Proceed Civilly or Criminally for Violation
9-2-14 Civil Violations; Citation and Enforcement Procedure
9-2-15 Habitual Offender
9-2-16 Interfering with Abatement or Other Enforcement Procedure
9-2-17 Giving False Information to Enforcement Personnel
9-2-18 Civil/Criminal Penalties; Restitution
9-2-19 Appeals to City Magistrate
9-2-20 What May be Appealed
9-2-21 Appeal Procedure
9-2-22 Stay of Order During Appeal
9-2-23 Appeal from City Magistrate Decision
9-2-24 Procedures for Service of Notices

Section 9-2-1 Purpose

A. The purpose of this article is to promote the health, safety, economic, aesthetic and general welfare of the citizens of the City of Benson and to protect neighborhoods against nuisances, blight and deterioration by establishing requirements for maintenance of all private property, whether residential or non-residential, or structures of whatever kind, and establishing maintenance of all land, whether improved or vacant.

B. This article shall apply to all buildings, structures and lands within the City of Benson without regard to the use, the date of construction or alteration.

Section 9-2-2 Definitions

In this article unless the context requires otherwise:

A. "Attractive Nuisance" means maintaining a condition, instrumentality, machine or other agency which is dangerous to young children due to their inability to appreciate peril and which may reasonably be expected to attract them.

[1] Modified by Ordinance No. 448

B. "Debris" means junk, lumber, furniture, furniture parts, stoves, sinks, cabinets, household fixtures, refrigerators, appliances, car parts, abandoned, broken, or neglected equipment, or the scatter remains of something of little or no economic value.

C. "Litter" means all putrescible and nonputrescible solid waste consisting of both combustible and noncombustible waste, including, but not limited to, ashes, street cleanings, garbage, rubbish, dead animals, abandoned or junked vehicles or parts thereof, solid market and industrial waste, paper, rags, wood, cans, bottles, empty barrels, crates, packing cases, packing materials, wrappings, cigarettes, cardboard, yard clippings, leaves, metal, mattresses, bedding, crockery, trash, boxes, glass, cartons, refuse, plaster, plastic, asphalt, tile, rock, bricks, concrete dribble, or other materials tending to create an unsightly condition and having an adverse effect upon the health, safety, economic, aesthetic, or general welfare of the adjoining properties or occupants thereof.

D. "Planning and Zoning Coordinator's designee" shall mean an individual employed by the City of Benson who has been appointed by the City Manager, in writing, to have the authority to issue City Code violations. The authorization shall be filed with the City Clerk.

E. "Private property" means any dwelling, house, building, vacant land or other structure, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any tract, lot, yard, grounds, walk, driveway, porch, steps, vestibules or mailbox belonging or appurtenant to such vacant land, dwelling, house, building or other structures, which is not owned by the federal government, state, county, city or political subdivision of the state.

F. "Public Nuisance" means any condition or use of premises or building exteriors which tends to endanger, injure or impair the health or safety of any person, or which may, directly or indirectly, cause disease or endanger, injure or damage the property of others. This definition shall include, but is not limited to:

1. Allowing premises to become unsanitary, a fire menace or a danger to health and safety of the citizens of the City through the accumulation, growth, storage or retention of rubbish, trash, animal or vegetable matter, metal, glass, grass or other cuttings, or other accumulation of filth or debris;

2. Creating an environment favorable to the harboring of insects and vermin by allowing the growth of weeds or grass in excess of ten inches in height. Natural growth in the public rights-of-way or in areas designated by the Parks Supervisor as "natural areas" are excepted from this provisions;

3. Permitting pools of water or other liquids to accumulate and remain upon the premises and become stagnant and foul. This provision shall not apply to natural drainage or drainages connected with streets or other public rights-of-way;

4. Retention of a dilapidated and dangerous building, shed, fence or other man-made structure which by reason of age, fire, faulty construction, lack of proper repair or any other cause is in such a condition that it constitutes an attractive nuisance to children or that its strength or stability substantially less than a well constructed new building or it is likely to or collapse in whole or in part and its condition endangers the life, health, safety or property of the public;

5. The unsheltered storage for fifteen consecutive days or more of inoperable, junked, partially dismantled, discarded or unregistered motor vehicles and other objects such

as appliances, machinery, implements and/or equipment which are no longer safely usable for the purposes for which manufactured (hereinafter collectively referred to as "personal property objects"), and which are visible from ground level beyond the boundary of the property. This definition shall not include personal property objects in a storage area repair shop, or other business enterprise in which the presence of such objects is necessary to the operation of the business and the business is operated in a lawful place and manner and in compliance with applicable zoning laws. Further, this definition shall not include inoperable historical vehicles, those vehicles being more than twenty-five years old, so long as said vehicles and covered in such a manner as approved by the Planning and Zoning Coordinator;

6. All places used or maintained as junkyards or dumping grounds, or for the disassembling, repair or rebuilding of automobiles, trucks, tractors or machinery or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, trailer or other vehicles, machinery of any kind or of any parts thereof or the storing or leaving of any machinery or equipment used by contractors or builders or other persons, which places are kept or maintained in such a manner so as to essentially interfere with the use and enjoyment of the surrounding public or private property owners. This definition shall not include business enterprises in which the presence of such objects is necessary to the operation of the business and the business is operated in a lawful place and manner and in compliance with applicable zoning laws;

7. Any unguarded, uncovered, unprotected or abandoned excavation, pit, well or hole dangerous to life or constituting an attractive nuisance to children;

8. Burning or disposing of refuse, sawdust or other materials in a manner as to permit ashes, sawdust, soot or cinders to be cast upon the streets or alley of the City or to cause or permit the smoke, ashes, soot or gases arising from the burning to substantially or unnecessarily interfere with the use and enjoyment of the surrounding public or private property or to injure or endanger the health of others; provided this subsection shall not prohibit any burning authorized under other sections of this Code;

9. Any private property area which is visibly filthy from the ground level from beyond the boundary of the property because of litter, debris or trash covered exterior areas and under any roof area not enclosed by walls, doors and windows of any building; including, but not limited to, cans, bottles, wood, metal, plastic, rags, boxes, papers, tires, auto parts, unused or inoperable appliances, discarded items or anything whatsoever, which is or may become a hazard to public safety; unless the same is kept in covered bins or receptacles;

10. Any object, building, tree, bush or vehicle that interferes with, obstructs or renders dangerous the free passage, use or vision of any public sidewalk, street or alley in the City; the Arizona Department of Transportation shall regulate obstructions, visual or otherwise, on state highways within the City;

11. Uncultivated plants, trees, shrubs, weeds or tall grass, growing or otherwise higher than ten inches; or any dead trees, bushes or shrubs or trees having dead or dry fronds descending downward more than eight feet and less than five feet from the ground;

12. Any fence with numerous missing blocks, boards or other fence structure maintained in such a condition of deterioration or disrepair so as to constitute a health or safety hazard to persons or property; and,

13. Any commercial or industrial type of equipment, including, but not limited to, tractor trailers, bulldozers, trenchers, cranes or other similar equipment parked in an area visible from the ground level beyond the boundary of the property for more than forty-eight hours in any residential district except when the equipment is being used for construction purposes on the site.

G. "Public place" means any and all streets, sidewalks, boulevards, alleys or other public ways, and any and all public parks, squares, spaces, grounds and buildings.

H. "Refuse" means all putrescible and nonputrescible solid wastes (except bodily wastes) including, but not limited to, garbage, rubbish, ashes, street cleanings, dead animals, abandoned or inoperative vehicles, appliances or machinery or parts thereof, and solid market and industrial waste.

I. "Rubbish" means nonputrescible solid wastes consisting of either combustible or noncombustible wastes including, but not limited to paper, wrappings, cigarettes, cardboard, tin cans, construction materials, yard clippings, leaves, wood, glass, bedding, crockery, weeds, trash, ashes or other accumulation of filth or debris.

J. "Weeds" means any of the following, living or dead, either standing or fallen:

1. Uncultivated brush, grass, cactus or any other vegetative growth not maintained for agricultural or ornamental purposes, and in an orderly manner, of a height in excess of ten inches as determined by measuring the maximum height of the tallest plant.

2. Useless or injurious plants.

Section 9-2-3 Authority to Enforce

A. Authorization for the regulations set forth in this article is granted to the City of Benson pursuant to Arizona Revised Statutes ' 9-240(B)(21)(a) as such may be amended from time to time.

B. The Planning and Zoning Coordinator or his designee is assigned the primary responsibility of enforcing this article and is granted the express and implied authority needed and necessary for enforcement.

C. Nothing in this article shall preclude the Planning and Zoning Coordinator or his designee from seeking voluntary compliance with the provisions of this article or for enforcing this article, proactively or reactively, through warnings, notices to comply or other such devices designed to achieve compliance in the most efficient and effective manner under the circumstances. Any person who neglects, fails or refuses to correct the violations contained within the notice to comply 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 separate council resolution, may be collected as a lien against the real property.

Section 9-2-4 Inspections

A. Unscreened exterior areas may be inspected at any time, with or without the involvement of the owner or occupant, in accordance with the legal requirements governing administrative inspections of private property.

B. Screened exterior areas shall be inspected only during the normal business hours of the City unless otherwise arranged, and only upon invitation or with the concurrence of the occupant, owner or agent for the owner when the premises are unoccupied, or when ordered by the court when probable cause exists to believe that conditions may be detrimental to the health, safety, economic or general welfare of the public.

C. Except in cases of alleged imminent hazard, if the occupant is not the owner of the premises to be inspected, the Planning and Zoning Coordinator or his designee shall provide notice in writing or by telephone to the owner or agent of the owner as to the date and time of inspection. The owner or agent may be present for the inspection if the occupant concurs. The inability to contact the owner or owner's agent, or the convenience of the owner or agent, shall not require the rescheduling of the inspection.

Section 9-2-5 Litter on Public Place or Private Property Prohibited

A. No person shall throw or deposit litter on any public place or private property whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any public place.

B. It is unlawful for any person to haul or cause to be hauled on or along any public street or alley any refuse, unless it shall be contained in vehicles or receptacles so constructed as to prevent the contents from falling, leaking or spilling or any noxious odor escaping therefrom, and to prevent any flies, insects or rodents from having access to contents. Every person hauling any refuse along any street or alley shall replace immediately, in the conveyance used for such hauling, any of the contents which may fall therefrom in or upon any street, alley or public or private property.

C. Persons owning or occupying property or places of business shall keep the sidewalk, alley or easement and any landscape area surrounding their premises free from litter, garbage or debris.

D. No person shall drive or move any truck or other vehicle within the City unless the vehicle is so constructed, loaded or secured as to prevent the load, contents, litter, garbage or debris from being blown or deposited upon any street, alley or other public place.

E. The owner or person in control of any private property shall at all times maintain the premises free of litter, garbage or debris. This provision does not prohibit the storage of litter, garbage or debris in authorized private receptacles for collection, or within any building when not in violation of any health, fire, building or other regulation, order, ordinance or statute.

Section 9-2-6 Public Nuisances Prohibited: Owner to Maintain Premises and Contiguous Areas

A. It shall be unlawful for any owner, lessor, lessee, manager, agent or other person having lawful control over a building, structure or parcel of land to cause, allow, permit, facilitate or aid or abet any violation of any provision of this article or to fail to perform any act or duty required by this article.

B. It shall be unlawful for any owner, lessor, lessee, manager or other person in control of any private property and the areas appurtenant and adjacent thereto to fail to maintain the property and contiguous areas in such manner so as not to create a public nuisance and be free of litter, weeds and debris.

C. The owner of record, as recorded in the County Recorder's Office, of the property which the violation of this article exists shall be presumed to be a person having lawful control over a structure or parcel of land. If more than one person is recorded as the owner of the property, the persons shall be jointly and severally presumed to be persons having lawful control over a structure or parcel of land. This presumption shall not prevent the enforcement of the provisions of this article against any individual person in violation of this article.

Section 9-2-7 Notice of Nuisance or Violation of Litter Control

A. Prior to the filing a civil citation or criminal complaint with the Benson City Magistrate Court, the Planning and Zoning Coordinator shall prepare a Notice to Abate and Cost Assessment to be served upon the person or persons in violation of any provision of this article.

B. Notice to abate:

1. The Notice to Abate and Cost Assessment shall be delivered in person or sent by certified mail, return receipt requested, from the Planning and Zoning Coordinator or his designee to the person, manager, agent or employee, owner, occupant or lessee of the property to be enjoined, at their last known address or the address to which the tax bill for the property was last mailed.

2. The notice shall contain a description of the property, both by street address and legal description, a specific statement of the violation, a statement that the person, manager, agent or employee, owner or lessee of the property has thirty days to abate or correct the violation, and in the event the violation is not corrected within thirty days, a civil citation or criminal complaint may be filed with the City of Benson Magistrate Court and/or the City of Benson may elect to clean up the property and the cost of such removal shall be assessed as a lien against the property, and the estimated cost of such removal to the City if the violation is not abated within thirty days.

3. The Planning and Zoning Coordinator or his designee may record the notice in the office of the county recorder. If the notice is recorded and compliance with the notice is subsequently satisfied, the Planning and Zoning Coordinator or his designee shall record a release of the notice.

4. If the person, manager, agent or employee, owner, occupant or lessee of the property to be abated cannot be located, such notice of abatement shall be posted upon the buildings, lots or grounds to be abated and shall be clearly legible and in a conspicuous place and shall be published at least two times in a newspaper of general circulation throughout the City, such publications to occur at least seven days apart.

5. The effective date of the notice to abate shall be the date received if delivered in person, or sent by certified mail, or the date the property is posted or the date of first publication if the alternate method of service is used.

C. The written notice shall be in substantially the following format:

NOTICE TO ABATE AND COST ASSESSMENT

TO: The Owner, Occupant or Lessee of the following property located within the City of Benson, Arizona:
(state the legal description and street address of the property)

You are hereby notified that there exists on the above described premises a violation of Section _____ of the Code of the City of Benson, Arizona, namely:

(describe the violation in specific terms, such as excessive weeds higher than ten (10) inches on the north side of the property adjacent to 1st Street)

You are further notified that this violation must be abated and corrected by the ____ day of _____, 20__, which is at least 30 days after your receipt of this Notice. If you do not comply within that time, the City of Benson, acting through its agents or employees, may elect to file a civil citation or criminal complaint against you with the City of Benson Magistrate Court or may elect to enter upon your property and remove the nuisance at your cost and expense. In that event, the minimum cost of removal that will be charged to you will be $_____. This cost will be assessed against you and the property and, if unpaid, will convert into a lien upon the real property.

You may appeal this Notice and the Cost Assessment to the City Magistrate by filing a written request for an appeal hearing with the Planning and Zoning Coordinator at 160 S. Huachuca, Benson, Arizona 85602 within ten (10) days from your receipt of this Notice. A hearing on your appeal will be scheduled before the City Magistrate within thirty (30) days from receipt of your written appeal. You will be notified of the time and date of the hearing by a mailing sent at least ten (10) days in advance of the hearing. At the hearing, you must appear and show cause, if any, why the condition existing on the property should not be declared a violation which must be abated or why the costs of abating such violation should not be assessed against you. If the City Magistrate decides that a violation exists which must be abated, you must abate and correct the violation by the date set by the City Magistrate. If you have not corrected the nuisance by that date, the City may do so at your expense, as set out above.

A Request for Appeal Hearing form may be obtained from the Planning and Zoning Coordinator at 160 S. Huachuca, Benson, Arizona 85602.

If you have questions, you may call (520) 586-2245 and speak to the Planning and Zoning Coordinator.

Dated this _____ day of _____, 20___.

_____
Planning and Zoning Coordinator

Section 9-2-8 Request for Time Extension on Notice to Abate

A. Any person may request an extension of time on a notice to abate. The request shall be made to the Planning and Zoning Coordinator.

B. A written request for an extension of time to comply with the notice to abate may be filed with the Planning and Zoning Coordinator at 160 S. Huachuca, Benson, Arizona 85602, within five days of receipt of the notice.

C. The Planning and Zoning Coordinator may grant one extension of the time limit set forth in the Notice to Abate. The extension shall not exceed 30 days. The extension period granted by the Planning and Zoning Coordinator shall start to run on the day the Planning and Zoning Coordinator issues his or her decision to grant the extension. The Planning and Zoning Coordinator may grant an extension of time only where it is shown that:

1. It would create a hardship to bring the property into compliance within the thirty day period required in the Notice to Abate; and,

2. The moving party presents a plan that is approved by the Planning and Zoning Coordinator by which the property will be brought into compliance within an additional thirty days.

Section 9-2-9 City Abatement of Nuisance or Litter Control Violation

When any person, owner, agent, occupant, or lessee 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 days from the effective date of the notice to abate, the Planning and Zoning Coordinator or his designee may abate such violation at the expense of such person, owner, occupant or lessee.

Section 9-2-10 Lien to Cover Abatement Costs

A. Abatement by City; Expense Statement:

The Planning and Zoning Coordinator, his 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. The administration charge and cost of recording liens and releases shall be collected whether or not the violation is abated by the City.

B. Assessment of City Abatement Costs:

1. After filing of the verified statement and account as set forth, the Planning and Zoning Coordinator or his designee shall prepare duplicate copies of a notice of lien and record one copy with the office of the county recorder, and within in five days thereafter serve by certified mail the remaining copy off such notice of lien upon the person, owner or occupant of the building, grounds or premises.

2. If the owner or occupant of the property to be liened cannot be located, a copy of the notice of lien shall be posted up on the buildings, lots or grounds affected thereby and be clearly legible and in a conspicuous place and shall be published at least two times in a newspaper of general circulation throughout the City, such publications to occur at least seven days apart.

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. The lien shall be subject and inferior to the lien for general taxes and to all prior recorded mortgages. A sale of the property to satisfy a lien obtained under the provisions of this section shall be made upon judgment or foreclosure and order of sale. The City may institute an action to enforce the lien in the superior court of the county at any time after the recording of the assessment, but failure to enforce the lien by the action 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 thereof.

C. Assessments that are imposed under subsection (B) of this section shall run with the land and against the property until paid in full and are due and payable in equal annual installments as follows:

1. Assessments of less than $500 shall be paid within one year after the assessment is recorded.

2. Assessments of $500 or more but less than $1,000 shall be paid within two years after the assessment is recorded.

3. Assessments of $1,001 or more but less than $5,000 shall be paid within three years after the assessment is recorded.

4. Assessments of $5,001 or more but less than $10,000 shall be paid within six years after the assessment is recorded.

5. Assessments of $10,001 or more shall be paid within ten years after the assessment is recorded.

D. A prior assessment for the purposes provided in this section shall not be a bar to a subsequent assessment or assessments for these purposes, and any number of assessments on the same lot or tract act of land may be enforced in the same action.

Section 9-2-11 Violations Not Exclusive; Each Day a Separate Violation

A. Violations of this article are in addition to any other violation enumerated within the City ordinances or this code and in no way limit the penalties, actions, or abatement procedures which may be taken by the City for any violation of this article which is also a violation of any other ordinance or code provision of the City or Arizona Revised Statues.

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

Section 9-2-12 Enforcement Jurisdiction of City

Jurisdiction of all proceedings to enforce the provisions of this article, whether civil or criminal, shall be in the City of Benson Magistrate Court.

Section 9-2-13 Option to Proceed Criminally or Civilly

The Planning and Zoning Coordinator or designee may proceed pursuant to this article by citation for civil sanctions or by complaint for criminal sanctions.

Section 9-2-14 Civil Violations; Citation and Enforcement Procedure

A. Civil Citation - Authority to Issue:

The Planning and Zoning Coordinator or his designee may issue a civil citation pursuant to this article.

B. Civil Violation - Commencement of Action:

1. A civil violation may be commenced by issuance of a citation in the City of Benson Magistrate Court by the Planning and Zoning Coordinator or his designee.

2. The citation shall direct the defendant to appear before the City Magistrate within ten days after issuance of the citation.

3. The citation will further notify the defendant that if he or she fails to appear on or before the date specified in the citation, a judgment by default will be entered against him or her, and the City Magistrate may, in his or her discretion, impose a civil sanction not to exceed Two Hundred Fifty Dollars ($250.00).

4. Service of the citation may be accomplished and will be deemed proper and complete by any of the following methods:

   a. By hand delivering a copy of the citation to the defendant.

   b. By mailing a copy of the citation to the person charged by certified or registered mail, return receipt requested, to the person's last known address; or,

   c. In the event service cannot be accomplished as set forth in subparagraphs a or b of this paragraph, the City may serve the defendant by any means allowed by under the Arizona Rules of Civil Procedure for the superior court.

C. Appearance by Defendant:

The defendant shall, within ten days of the issuance of the complaint, appear in person or through his or her attorney before the City Magistrate and shall either admit or deny the allegations contained in the complaint. If the defendant admits the allegation, the City Magistrate may enter judgment against the defendant and impose a civil sanction for the violation. If the defendant denies the allegations contained in the citation, the City Magistrate shall set the matter for hearing.

D. Default Judgment:

If a person served with a citation fails to appear on or before the time directed to appear or at the time set for hearing by the City Magistrate, the allegations in the citation shall be deemed admitted and the City Magistrate may enter judgment for the City and impose a civil sanction.

E. Rules of Procedure for Civil Violations:

The Arizona Rules of Court for civil traffic violation cases shall be followed by the City Magistrate for civil violations of this article, except as modified or where inconsistent with the provisions of this article, local rules of procedure established for the hearing or rules of the supreme court.

F. Collection of Fines:

Any judgment for civil sanctions taken pursuant to this article may be collected as any other civil judgment.

Section 9-2-15 Habitual Offender

A person who commits a violation of this article after having previously been found responsible by the City Magistrate for committing three or more civil violations of this article within a twenty-four month period, whether by admission, by payment of the fine, by default or by judgment after hearing shall be guilty of a Class Three Misdemeanor. The City Attorney is authorized to file a criminal misdemeanor complaint in the Magistrate Court against habitual offenders who violate this article. In applying the twenty-four month provision, the dates of which the offender was found responsible shall be the determining factor, irrespective of the sequence of the commission of the offense.

Section 9-2-16 Interference with Abatement or Other Enforcement Procedure

Any person who interferes, prevents, or attempts to interfere or prevent, an individual employed by the City 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 is guilty of a Class Three Misdemeanor.

Section 9-2-17 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 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 Three Misdemeanor and the Planning and Zoning Coordinator is authorized to commence an action under this section by issuing a criminal complaint in the City of Benson Magistrate Court.

Section 9-2-18 Civil/Criminal Penalties; Restitution

A. *Civil penalties.* Upon finding a person responsible for a civil violation of this article, the City Magistrate may impose a civil sanction of not less than $50.00 nor more than $250.00. The City Magistrate may suspend the imposition of the civil sanction if at the time of sentencing, he or she finds by a preponderance of the evidence that the violation the defendant was found responsible for has now been corrected, and that the defendant is now in compliance with this article. In that event, the City Magistrate may suspend all or part of the fine.

B. *Criminal penalties.*

1. A person who is convicted of a violation of this article is guilty of a Class Three Misdemeanor and shall be sentenced to a fine of not less than $250.00, nor more than $500.00 and probation for not less than six months. The City Magistrate shall not suspend any or all of the impositions or execution of the sentence required by this section.

2. Notwithstanding paragraph 1 of this subsection, 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.

C. *Restitution.* In addition to any sanction or penalty provided for in subsections A and B of this section, 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 9-2-19 Appeals to City Magistrate

A. Any notice to abate or assessment may be appealed to the City Magistrate.

B. An appeal must be filed within ten days of the service of the notice to abate or assessment and must be filed with the Planning and Zoning Coordinator at 160 S. Huachuca, Benson, Arizona 85602.

C. Failure of a person entitled to appeal under this article to timely file an appeal shall constitute a waiver of the right to an appeal hearing on the notice before the City Magistrate, and the person shall be estopped to deny the validity of any notice or assessment which could have been timely appealed.

D. The notice of appeal shall set forth, in writing, the person's reasons for believing they are not in violation of this article or that the assessment is excessive.

Section 9-2-20 What May Be Appealed

Any person may appeal a Notice to Abate and Cost Assessment to the City Magistrate:

A. When it is claimed the property or building subject to the notice is not in violation of this article.

B. When it is claimed the true intent of this article or standards described in this article have been incorrectly interpreted.

C. When it is claimed that the statement of costs for correcting or abating the violation is excessive.

Section 9-2-21 Appeal Procedure

A. The City Magistrate shall set a date for hearing on appeal to be heard within thirty days of the receipt of notice of appeal by the Planning and Zoning Coordinator.

B. The City Magistrate shall take testimony from all parties to the appeal. The parties may, if they choose, be represented by an attorney.

C. The City Magistrate shall render a decision within five days of the hearing and the findings and decision shall be mailed to all parties to the appeal.

Section 9-2-22 Stay of Order During Appeal

Except for orders to vacate or violations presenting an imminent hazard, the timely filing of an appeal shall stay enforcement of a Notice to Abate and Cost Assessment until the appeal is finally determined by the City Magistrate.

Section 9-2-23 Appeal from City Magistrate Decision

Any party aggrieved by a decision of the City Magistrate may appeal to the superior court in accordance with the Rules of Procedure for special actions.

Section 9-2-24 Procedure for Service of Notice

A. Any notice required to be given for any purpose under this article delivered in accordance with the terms of Section 9-2-14 D shall be deemed proper and complete.

B. Notice is deemed effective on the date it is hand delivered or deposited in the United States mail.

C. Nothing in this article shall preclude the City from giving additional oral or written notice at its discretion. If the City does elect to give any additional notice in any instance, it shall not thereby become obligated to give such additional notice thereafter in the same or other situation.

ARTICLE 9 - 3 Smoking and Public Health (Added by Ordinance #459)

9-3-1 Purpose
9-3-2 Definitions
9-3-3 Regulation of Smoking in Buildings Owned by the City of Benson
9-3-5 Enforcement
9-3-6 Severability

Section 9-3-1 Purpose

The City Council of the City of Benson, Arizona, finds as follows:

1. The smoking of tobacco and other plants or weeks is a health danger to those exposed to the smoke and a source of annoyance and discomfort to those present in confined areas where such smoke is present;

2. It is in the best interest of the employees of the City of Benson to protect non-smokers from involuntary exposure to environmental tobacco smoke within the workplace;

3. It is in the best interest of the employees of the City of Benson to protect non-smokers from involuntary exposure to environmental tobacco smoke within City owned vehicles;

4. It is in the best interest of the citizens of the City of Benson and the public in general to protect non-smokers from involuntary exposure to environmental tobacco smoke within all buildings owned by the City of Benson; and

5. For these reasons, the purpose of this Section is to regulate smoking in enclosed public places and places of employment.

6. The City of Benson shall post no smoking signs in prominent locations in all enclosed public places by this ordinance.

Section 9-3-2 Definitions

1. Smoke or smoking@ means burning or carrying any lighted cigarette, cigar, tobacco or any other plant or weed or placing any burning tobacco, weed or plant in an ashtray or other receptacle and allowing smoke to diffuse into the air.

2. Public place@ means any enclosed buildings owned, controlled, occupied or managed by the City of Benson.

3. Smoking area@ means any area in which the burning or carrying of any lighted cigarette, cigar, tobacco or any other plant or weed or placing any burning tobacco, weed or plant in an ashtray or other receptacle and allowing smoke to diffuse into the air is permitted.

Section 9-3-3 Regulation of Smoking in Buildings Owned by the City of Benson

1. Smoking shall be prohibited within all enclosed buildings owned, controlled, occupied or managed by the City of Benson.

2. Smoking shall be prohibited within twenty-five (25) feet of the main entrance or ten (10) feet from any secondary, side or back entrance of any enclosed public place where smoking is prohibited.

3. The City of Benson shall not be required to provide any smoking areas outdoors of any public place.

4. If any smoking area is provided outdoors, said area shall not require others to walk through it upon entering any public place.

5. In the event any smoking area is provided outdoors, all smoking trash receptacles shall be placed beyond the twenty-five (25) feet limit prescribed above.

Section 9-3-4 Regulation of smoking in Vehicles owned by the City of Benson

Smoking shall be prohibited within all vehicles owned, controlled, leased or managed by the City of Benson.

Section 9-3-5 Enforcement

1. Any person who smokes in the area required to be smoke free shall be guilty of a civil offense and shall be subject to a fine of fifty dollars ($50.00) for the first offense, one hundred dollars ($100.00) for the second offense, two hundred dollars ($200.00) for the third offense and four hundred dollars ($400.00) for each offense thereafter within a twelve month period.

2. Each day a violation continues constitutes a separate civil offense and may be charged accordingly.

3. The Benson City Manager or such enforcement officer designated by the City Manager shall be responsible for enforcement of the provisions of this ordinance.

4. Enforcement of this Section shall be commenced by the issuance of a civil complaint signed by the enforcement officer and referred to the Municipal Court for adjudication.

5. By enforcing this Section, the City undertakes only to promote the general welfare and health of the community. This Section shall not create any private cause of action by a member of the public and this Section shall not create the basis for or create the standard of care for any private cause of action. It does not in any way assume, nor does it impose on its officers and employees an obligation for breach of which it is liable for money damages to any person claiming injury from such breach.

Section 9-3-6 Severability

If any section or portion of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, that section or portion shall be deemed severable and shall not affect the validity of the remaining portions of the Ordinance.

Article 9-4 SALE OF PRODUCTS CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE [1]

9-4-1 Purpose
9-4-2 Definitions
9-4-3 Public Access to Pseudoephedrine Products
9-4-4 Seizure and Destruction of Pseudoephedrine Products
9-4-5 Seizure Appeal Procedure
9-4-6 Retail Establishment's Right to Refuse Sale
9-4-7 Reporting Requirements for Sales of Pseudoephedrine Products
9-5-8 Criminal Penalty

Section 9-4-1 PURPOSE

The purpose of this article is to promote the health, safety, and general welfare of the citizens of the City of Benson by regulating the manner of sale of products containing pseudoephedrine, ephedrine and norpseudeophedrine as key ingredients in the production and illicit manufacture of methamphetamine.

Section 9-4-2 DEFINITIONS

In this article unless the context requires otherwise:

A. **"PSEUDOEPHEDRINE PRODUCT"** means any product containing ephedrine or pseudoephedrine and includes any compound, mixture or preparation that contains any detectible quantity of pseudoephedrine, ephedrine and norpseudoephedrine or their salts, optical isomers or salts of optical isomers. Product packaging that lists pseudoephedrine, ephedrine and norpseudeophedrine as an active ingredient shall constitute prima facie evidence that the product is a pseudoephedrine product.

B. **"RETAIL ESTABLISHMENT"** means any place of business that offers any pseudoephedrine product for sale at retail.

C. **"PERMITEE"** means any person who holds or is required to hold a license of permit to sell drugs at retail pursuant to Title 32, Chapter 18 of the Arizona Revised Statutes.

D. **"OPERATOR"** means any owner, manager, corporation or other fictitious person or other responsible party.

Section 9-4-3 PUBLIC ACCESS TO PSEUDOEPHEDRINE PRODUCTS

A. The operator and/or the permittee of a retail establishment shall keep all pseudoephedrine products behind a store counter or otherwise in a manner that is inaccessible to customers without the assistance of the operator or an employee of the establishment.

B. Any pseudoephedrine products found to be displayed in a retail establishment in violation of subsection (A) constitutes a nuisance and a subject to seizure and disposal by the City in the manner provided in section 9-4-5 of this Article.

[1] Added by Ordinance No. 499

Section 9-4-4 SEIZURE AND DESTRUCTION OF PSEUDOEPHEDRINE PRODUCTS

A. Products subject to seizure under this section may be seized by a peace officer under the authority of a search warrant or upon probable cause to believe that the products are subject to seizure pursuant to section 9-4-3(B). Before removing any products subject to seizure from the retail establishment, the peace officer shall give the operator or permittee of the establishment a reasonable opportunity to remove the products from the area of the establishment accessible to the public, unless the operator or the permittee has been afforded this opportunity on a previous occasion within the preceding twelve (12) months.

B. At the time of seizing any products under this section, the peace officer will deliver a notice of intent to dispose of the seized products. This notice shall include the date and location of the seizure, an inventory of the items seized, a description of how a post seizure hearing may be requested, the time for requesting that hearing, and a warning that failure to request the hearing in a timely manner will result in the disposal and destruction of the seized property. The notice under this subsection shall be personally served on the operator or permittee of the retail establishment present at the time of seizure, or if that person cannot be identified at the time of seizure, on any employee of the establishment.

Section 9-4-5 APPEAL PROCEDURE FOR SEIZURE OF PSEUDOEPHEDRINE PRODUCTS

A. A person receiving a notice of intent to dispose under section 9-4-5 may request a post-seizure hearing to determine the validity of the seizure within fifteen (15) days of receiving the notice.

B. The court shall conduct the post-seizure hearing within ten (10) days of the court's receipt of the request, excluding weekends and holidays. Failure to request a hearing in a timely manner, or failure to attend a scheduled hearing, constitutes waiver of the right to challenge the validity of the seizure. At the hearing the City shall have the burden of establishing by a preponderance of the evidence that the property was subject to seizure pursuant to sections 9-4-4 and
9-4-5 of this Article. At the hearing the court may admit any reliable and relevant evidence. If the court finds that the products were not subject to seizure, it shall order the immediate return of all seized items. If the court finds that the products were properly seized pursuant to this section, the court shall order that the products are forfeited to the City and shall direct the City to destroy and dispose of the seized items.

Section 9-4-6 RETAIL ESTABLISHMENT'S RIGHT TO REFUSE SALE

A. Any operator, permittee or employee of a retail establishment may refuse to sell any pseudoephedrine product to any person if the operator, permittee or employee has reason to believe that the product will be used in the unlawful manufacture of methamphetamine or other controlled substance. Facts that give rise to the reason to believe that the product will be used unlawfully include but are not limited to a "suspicious transaction" as defined in Section 13-3401 of the Arizona Revised Statutes; the attempted purchase of pseudoephedrine products in excess of the amounts permitted by Arizona law; the attempt to purchase pseudoephedrine products in a series of transactions in an effort to circumvent the limitations on sales; or the attempt to purchase pseudoephedrine products in conjunction with other products, such as red phosphorous or iodine, that are known to be used in manufacturing methamphetamine.

B. Any person who refuses to make a retail sale in accordance with this section is not liable to its customer or any other person for any loss or damage caused in whole or in part by the refusal to sell.

Section 9-4-7 REPORTING SALES OF PSEUDOEPHEDRINE PRODUCTS

A. A person making a retail sale of a product containing ephedrine or pseudoephedrine shall require acceptable photo identification from the purchaser and shall record the purchaser's name, date of birth, address and quantity of ephedrine or pseudoephedrine product purchased. For purposes of this subsection, acceptable photo identification means any of the following:

1. Current driver's license or picture identification issued by this or any other state or territory of the United States of America or the United States Government;

2. A current valid passport issued by the United States of America or a foreign government;

3. A current tribal identification card issued by a Federally Recognized Tribe;

4. A current military identification card issued by the United States Armed Forced or the Department of Defense; or,

5. A consular identification card that provides the required above information issued by a foreign government.

B. A retail establishment of pseudoephedrine products shall maintain a report consisting of the information required to be obtained under subsection (A) for sales occurring in the previous month for a period of one (1) year. The report shall be in writing and shall be available for inspection by the Benson Police Department or any other law enforcement agency requesting examination.

Sec. 9-2-8 CRIMINAL PENALTY

A violation of this Article is a class one misdemeanor and shall be punishable in accordance with Title 13, Chapter 7 of the Arizona Revised Statutes.