

PZ-23-00094 UPDATES TO CITY CODE – LITTERING
TITLE 6 POLICE REGULATIONS
TITLE 7 HEALTH AND SANITATION

Provisions that are being deleted are shown in bold strikethrough.

Provisions that are being added are shown in bold text.

Section 1: Delete Chapter 6-06 Littering from Title 6 Police Regulations, and move to Title 7 Health and Sanitation, create a new Chapter 7-11 Littering with the following modifications:

Chapter 7-11 Littering

7-11-001-0001 DEFINITIONS:

For the purposes of this Chapter, the following terms, phrases and words and their derivations shall have the meaning given herein when not inconsistent with the context; words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

ADJACENT PROPERTY: The term "adjacent property" shall mean that segment of an alley, sidewalk, or public utility easement from the centerline of the alley, sidewalk or public utility easement to the outermost corner of the private property abutting the alley, sidewalk or public utility easement, and continuing the length of the private property to the end in which the private property no longer abuts the alley, sidewalk or public utility easement.

ADJACENT PROPERTY OWNER: The term "adjacent property owner" shall mean any owner, occupant, licensee or lessee of private property in which any segment of the private property abuts an alley, sidewalk, or public utility easement.

AUTHORIZED CONTAINER: The term "authorized container" shall mean any container provided by the City of Flagstaff or an authorized private refuse collector for the collection of refuse.

HANDBILL: The term "handbill" means any advertising circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, sample or device, leaflet, paper, notice or other written, printed or painted matter of a temporary nature calculated to attract the attention of the public. The term "Handbill" does not include newspaper. "Handbill" does not come within the definition of a sign for purposes of Chapter 10-08 and Chapter 10-14 of the City Code.

~~HAZARD TO THE PUBLIC HEALTH AND SAFETY: The term "hazard to public health and safety" shall mean but is not limited to the following conditions:~~

- ~~(1) an accumulation of litter in excess of eight (8) cubic feet per one quarter (1/4) acre; or~~
- ~~(2) an accumulation of litter which materially hampers or interferes with the prevention of, or suppression of fire; or~~
- ~~(3) an accumulation of litter which is infested or exhibits an infestation with insects, rodents, vermin or other noxious pests; or~~
- ~~(4) an accumulation of litter which creates an attractive nuisance; or~~
- ~~(5) an accumulation of litter which is foul or malodorous to a reasonable person of normal sensibilities; or~~
- ~~(6) an accumulation of litter which presents an immediate likelihood of causing or which may cause personal physical harm; or~~
- ~~(7) an accumulation of litter which interferes with passage of any street, sidewalk, or alley within the City, or visibility of any traffic, traffic control device or signal.~~

~~JUNK VEHICLE: The term "junk vehicle" means any vehicle (see A.R.S. § [28-101\(52\)](#)), trailer (see A.R.S. § [28-101\(49\)](#)), semitrailer (see A.R.S. § [28-101\(44\)](#)), truck tractor (see A.R.S. § [28-101\(51\)](#)), mobile home (see A.R.S. § [28-2063\(E\)](#)), or watercraft (see A.R.S. § [5-301\(16\)](#)):~~

- ~~(1) that is in such a state of deterioration that it cannot be profitably dismantled or salvaged for parts and cannot be profitably restored to an operable condition; or~~
- ~~(2) that is a hazard to the public health and safety as defined herein.~~

~~LITTER: Trash, wastepaper, debris, or garbage lying scattered about. An accumulation of objects that may create a hazard by interfering with the prevention or suppression of fire, allowing an infestation of insects, rodents, vermin, or other noxious pests, creating an attractive nuisance, creating foul odors, or the potential for causing personal physical harm. The word "litter" shall mean "refuse" and "rubbish" as defined herein, and all other waste materials which, if thrown or deposited as herein prohibited, constitutes a hazard to the public health and safety. Litter shall not include "refuse", or~~

~~"rubbish", as defined herein, or other waste materials authorized to be stored or otherwise kept by a conditional use permit or which constitutes a permissible use within the applicable zoning district and is in compliance with the Land Development Code.~~

PERSON: The word "person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind, public or private.

PRIVATE PROPERTY: The term "private property" shall mean any private property, including vacant land, a dwelling, house, building or other structure, designed or used either wholly or in part for private residential purposes, or for commercial use whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any tract, lot, yard, grounds, walk, driveway, porch, steps, vestibules or mail box belonging or appurtenant to such vacant land, dwelling, house, building or other structures.

PUBLIC PLACE: The term "public place" shall mean any and all streets, sidewalks, boulevards, alleys or other public ways, and any and all public parks, squares, spaces, grounds and buildings.

~~REFUSE: The word "Refuse" shall mean all putrescible and nonputrescible solid, semi-solid, and liquid wastes including but not limited to garbage, rubbish, ashes, liquid waste, street cleanings, dead animals, junk vehicles or parts thereof, and solid market and industrial waste.~~

RESPONSIBLE PARTY: The term "Responsible Party" means any Person who directs, permits, allows, causes or otherwise benefits from the posting, affixing, displaying, painting or otherwise attaching of handbills to or on public objects, public structures, public buildings, Public Places or utility poles; or to or on Private Property or upon any vehicle. For purposes of this section, the following Persons shall be deemed to be Responsible Parties:

- (1) The Person whose name, telephone number or address appears as the contact on any matter contained in a Handbill.
- (2) The Person whose name, telephone number or address appears as the sponsor or contact for a sporting event, theatrical performance, concert, band or musical performance, or other performance, or similar activity or event which is the subject of the Handbill advertising the subject activity or event;

- (3) The owner or lessee, if the property is leased, of property used for a commercial activity or event advertising the subject commercial activity or event in a Handbill;
- (4) The owner or lessee, if the property is leased, of property used for a yard or garage sale which property is the address at which the yard or garage sale is advertised in a Handbill:
- (5) The real estate agent, broker, brokerage firm or other Person whose name or telephone number appears on the Handbill advertising real or personal property for sale, lease or rent.

~~**RUBBISH: The word "rubbish" shall mean nonputrescible solid wastes consisting of either combustible or noncombustible wastes including paper, wrappings, cigarettes, cardboard, tin cans, construction materials of no apparent economic value, yard clippings, dead leaves, tree trimmings, glass, bedding, crockery, paper cartons, aluminum foil, plastic materials, trash, ashes or other accumulation of filth or debris.**~~

SHOPPING CENTER: A group of commercial establishments planned, developed, and managed as a unit with off-street parking provided on the property. (Ord. 1781, 11/17/92) (Ord. 1992, 06/01/99)

~~7-11-001-0002 UNAUTHORIZED ACCUMULATION OF LITTER ON PRIVATE PROPERTY:~~

~~**It shall be unlawful for any owner, occupant, or lessee of Private Property to allow Litter to accumulate on the Private Property unless the same is kept in covered bins or other Authorized Container. However, dead vegetative matter including grass clippings, leaves and tree trimmings may be permitted to remain on the property for the purpose of composting, provided such compost is regularly maintained and confined so as to prevent the compost from drifting, blowing, or generating obnoxious odors onto adjoining Private Properties or Public Places.**~~

It shall be a violation of this section ~~for if~~ the owner, occupant, or lessee of Private Property ~~to allow Litter to accumulate on their property. has not cleared away accumulated Litter on that property by 9:00 AM of each day from the previous day's use.~~ Organic matter may remain on the property for the purposes of composting, provided the compost is regularly maintained and confined to prevent impacts to adjoining properties. Each day that the owner, occupant, or lessee fails to comply with the requirements of this section shall constitute a separate violation.

~~6-06-001-0005 UNINHABITED OR VACANT PRIVATE PROPERTY:~~

~~It shall be unlawful for the owner or lessee of any uninhabited or vacant private property to abandon, neglect or disregard the condition of the property so as to permit the accumulation of litter. (Ord. 1781, 11/17/92) (Ord. 1992, 06/01/99)~~

7-11-001-0003 LOADING OR UNLOADING DOCKS:

The person owning, operating or in control of a loading or unloading dock shall maintain private containers for collection of litter and shall maintain the dock area free of litter in such a manner that litter or offensive odors from ~~Litter rubbish or refuse~~ will be prevented from being carried by the elements to adjoining private properties or public places.

7-11-001-0004 PRIVATE RECEPTACLES, SHOPPING CENTERS:

It shall be the responsibility of the management group or persons(s) in control of a shopping center to provide one (1) receptacle for litter at a minimum of every 100 feet of store frontage allowing public ingress and egress. The minimum size of the receptacle shall be sixty (60) gallons. The receptacle shall be of sufficient weight to prohibit the container from tipping over, and shall include a lid. The design of the receptacles shall be consistent with the architectural style of the shopping center. The receptacles shall be placed not more than twenty (20) feet from the building. It shall be the responsibility of the shopping center management group or person(s) in control of the shopping center to service the receptacles.

7-11-001-0005 POSTING OF HANDBILLS ON PUBLIC AND PRIVATE PROPERTY:

A. Public Property: It is a violation of this Chapter 6-06 to post, affix, display, paint or otherwise attach any Handbill to or upon any street lamp post, street sign, traffic signal, traffic sign, traffic-control device, hydrant, tree, shrub, tree stake or guard, railroad trestle, electric light, power, telephone, or other utility pole, or on any other public object, public structure, public building, or Public Place except as may be otherwise required or provided by law. Handbills may be handed directly to persons in Public Places.

B. Private Property: No Person shall affix, deposit, throw or distribute any Handbill upon any Private Property, except by handing or transmitting any such Handbill directly to the owner or occupant of such Private Property. In the case of private premises which are not posted against the receiving of Handbills or solicitations, Handbills may be placed upon the premises in a non-permanent manner so as to prevent such Handbill from being deposited by the elements upon any Public Place or other Private Property, but in a manner which does no damage to the property where the Handbill has been placed. Examples of acceptable means of placing handbills on private property include but are not limited to use

of plastic bags containing handbills hung from doorknobs or depositing handbills under doormats. The use of nails, staples, tacks or adhesives is forbidden.

C. Vehicles: No Person shall deposit any Handbill upon any vehicle on a Public Place without the express consent of the owner or person in control of such vehicle.

D. Clean Up: It shall be the responsibility of any person distributing Handbills to maintain the area which is utilized free of any Litter caused by or related to distribution of the Handbills. The person distributing the Handbills and the Responsible Party, as defined in 06-06-001-0001, shall be jointly and individually liable for the Litter created by the distribution of Handbills and for any verified costs incurred by the City associated with the removal of the Handbills deposited or thrown upon Public Places.

E. Whenever a Handbill is illegally posted or deposited in violation of this section, the Person(s) who illegally posted the Handbill(s) and the Responsible Party, as defined in 6-06-001-0001, shall be jointly and individually liable for the violation and for any verified costs associated with the removal of the illegally posted Handbill(s).

1. Nothing contained in this section shall apply to the posting of notices or markings on public structures, public objects, public buildings, Public Places or utility poles which may be otherwise authorized, permitted or required by law or serve a specified safety or warning purpose.

2. Any Handbill found posted, deposited, or otherwise affixed upon any property contrary to the provisions of this section may be removed by the City Manager's designee. In addition, the City's costs of removal shall be assessed against the persons who illegally posted the Handbill(s), or against the Responsible Party in accordance with the provisions of this chapter.

7-11-001-0006 ENFORCEMENT AUTHORITY:

The City Manager of the City of Flagstaff, or designee, is hereby authorized and directed to enforce all of the provisions of this Chapter. ~~For such purposes the City Manager shall have the powers of a law enforcement officer. Peace officers shall, in addition to all powers granted to peace officers by the State of Arizona, have the same authority as the City Manager's designee in the enforcement of this Chapter.~~

7-11-001-0007 INSPECTIONS:

The City Manager's designee is hereby authorized and directed to make inspections in the normal course of job duties; or in response to a complaint that an alleged violation of the provisions of this Code may exist; or when there is a reason to believe that a violation of this Code has been or is being committed. Unscreened exterior areas may be inspected at any time with or without the involvement of, or notice to, the owner, occupant, licensee or lessee.

7-11-001-0008 VIOLATIONS:

~~It shall be unlawful for any person to cause, facilitate, or aid or abet any violation of any provision of this Chapter or to fail to perform any act or duty required by this Chapter. A violation of a provision of this Chapter may be enforced by an administrative proceeding or by a complaint for criminal penalties.~~

- A. Any responsible party that allows, permits, facilitates, suffers, or aids or abets any violation of any provision of this City Code Chapter or fails to perform any act or duty required by this City Code Chapter shall be responsible for a civil violation unless otherwise specified.
- B. Every civil action or proceeding in compliance with this division shall be commenced and prosecuted in compliance with City Code Title 1, Administration, Chapter 1-15, Municipal Court, Section 1-15-001-0011, Civil Enforcement Procedures.

~~6-06-001-0012 NOTICE OF VIOLATION:~~

~~A. The City Manager or designee may cause to be issued a Notice of Violation to any person alleged to be in violation of this Chapter.~~

~~B. If a Notice of Violation is issued, such notice shall contain the following:~~

~~1. Date of the violation, the legal description of the property, the Chapter and Section which is being violated and a description of the unlawful condition.~~

~~2. Notification of possible criminal proceedings being brought against the person by the City of Flagstaff if the unlawful condition is not abated within thirty (30) days from receipt of the Notice.~~

~~3.— Notice to the alleged violator that, in addition to any fine or penalty which may be imposed for a violation of this ordinance, the alleged violator will be liable for all costs which may be assessed pursuant to this ordinance for removing, abating or enjoining the rubbish, trash, filth or debris. The Notice of Violation shall contain an estimated statement of the cost of removal or abatement of the violation including labor, disposal fees, and equipment rentals. The Notice of Violation shall state that unless the person has brought the unlawful condition into compliance with the ordinance within thirty (30) days from the receipt of the Notice of Violation, the City of Flagstaff may, at the expense of the person, perform the necessary work at a cost not to exceed the estimate given in the notice, plus a five (5) percent surcharge for an additional inspection and other administrative and incidental costs in connection therewith.~~

~~C.— If the unlawful condition is not abated, the City Manager or designee may cause to be issued a criminal complaint or a Notice of Civil Violation. Each day that the alleged violator fails or refuses to comply with the requirements of this Chapter after expiration of the thirty (30) day period from receipt of the Notice of Violation shall constitute a separate violation and shall not require further notice to the owner, occupant or lessee of the property upon which the violation exists.~~

~~6-06-001-0013 SERVICE OF NOTICE:~~

~~A.— The Notice of Violation shall be personally served on the owner or person controlling such property by any duly authorized official, in the manner provided in Rule 4(d) of the Arizona Rules of Civil Procedure, or mailed to the owner or person controlling such property at the last known address by certified or registered mail, or the address to which the tax bill for the property was last mailed.~~

~~B.— If the owner does not reside on such property, a duplicate notice shall also be sent by certified or registered mail at the last known address of the owner or person controlling of such property.~~

~~6-06-001-0014 APPOINTMENT OF HEARING OFFICER:~~

~~The hearing officer for administrative hearings under this ordinance shall be a judge of the Municipal Court of the City of Flagstaff.~~

~~6-06-001-0015 CIVIL VIOLATION AND ADMINISTRATIVE HEARING:~~

~~A.— If the City chooses to proceed on a civil violation of the ordinance, the City shall serve or mail a Notice of Civil Violation and Administrative Hearing to the owner or person controlling the property upon which an unlawful condition exists upon expiration of the initial thirty (30) day notice period as~~

~~set forth in 6-06-001-0013. A hearing shall be held no sooner than five (5) days after the date the Notice of Civil Violation and Administrative Hearing is mailed or served. The date of mailing shall be excluded in computing the time period for a hearing under this rule. Neither the City nor the party served is required to be represented by counsel at the administrative hearing, but may be if they so choose. No pre-trial discovery shall be permitted absent extraordinary circumstances. Immediately before the hearing, both parties shall produce for inspection any exhibits and written or recorded statements of any witness which are to be offered at the hearing. Failure to produce exhibits or statements may result in the hearing officer denying admission of the evidence not produced. The hearing officer may call and examine witnesses, including the party served. All testimony shall be given under oath or affirmation. No person may be examined or cross-examined at a hearing except by the hearing officer, an attorney for a party, or the party served with the Notice of Civil Violation and Administrative Hearing. The Arizona Rules of Evidence shall not apply in the hearing; any evidence offered may be admitted subject to a determination by the hearing officer that the offered evidence is relevant, material, and has some probative value to a fact at issue. The hearing officer may enter a finding for the City if the party served fails to appear for the hearing.~~

~~B. If the hearing officer determines, after hearing the parties and considering their evidence, that the City's notice to the party served was accurate, delivered to the proper party or parties, and that the estimated assessment for the actual cost of removal is supported by the City's evidence, then the hearing officer shall make a finding for the City.~~

~~C. The hearing officer shall issue a decision within five (5) days of the hearing. Intermediate Saturdays, Sundays and legal holidays shall be excluded in computing the time period for issuing a decision under this rule. The decision shall be in writing, set forth the factual basis for the decision, and be served in accordance with the provisions of 6-06-001-0013.~~

~~6-06-001-0016 APPEAL OF DECISION AND COST OF REMOVAL:~~

~~A. The City Council shall hear and determine all appeals from a civil violation. A Notice of Appeal must be in writing and filed in the office of the City Clerk within five (5) days of receipt of the hearing officer's decision. The date of receipt, and intermediate Saturdays, Sundays and legal holidays shall be excluded in computing the time period for timely appeal.~~

~~B. The Notice of Appeal shall specify the grounds for reversal of the hearing officer's decision or cost of removal. The Council shall, at its next regular meeting after receiving the appeal, hear and~~

~~determine the same by motion and resolution. The decision of the Council shall be final and may be appealed to Superior Court~~

~~6-06-001-0017 SCOPE OF REVIEW:~~

~~The City Council shall have authority to affirm, reverse, amend or remand the matter to the Hearing Officer if it finds that the Hearing Officer's decision or the cost of removal is not supported by substantial evidence, is arbitrary and capricious or is not in conformance with the law.~~

7-11-001-0009 VOLUNTARY ABATEMENT; REMOVAL BY CITY:

A. When a person alleged to be in violation of this Chapter elects to voluntarily abate the unlawful condition within thirty (30) days as provided under Section 6-06-001-0012, the person shall notify the City Manager's designee after the condition has been abated. The City Manager's designee shall thereafter inspect the private or adjacent property to determine whether the condition has been brought into compliance with this Chapter.

B. If the City Manager's designee determines that the person is no longer in violation of this Chapter, the City Manager's designee shall issue a Notice of Voluntary Abatement and Compliance to the person alleged to be in violation and the administrative proceeding shall be deemed closed.

~~C. When any such person on whom a Hearing Officer's finding of violation has been served fails, neglects or refuses to bring the unlawful condition into compliance within ten (10) days from receipt of the Hearing Officer's finding of violation, the Public Works Director is authorized and directed to remove and dispose of the litter.~~

~~D. In the event an appeal has been filed pursuant to 6-06-001-0016, no action shall be taken by the City until the Council has heard and determined all matters contained in the Notice of Appeal.~~

~~6-06-001-0019 LIEN FOR REMOVAL:~~

~~If no appeal is taken from the amount assessed for removal, or if an appeal is taken and the Council has affirmed or modified the amount of the assessment, the assessment shall be recorded in the office of the County Recorder of Coconino County, Arizona, including the date and amount of the assessment and the legal description of the property. From the date of its recording, the assessment shall be a lien on said private property and the several amounts assessed against such private property until paid.~~

~~A.— Any assessment recorded under this Chapter is prior and superior to all other liens, obligations, mortgages or other encumbrances, except liens for general taxes. A sale of the property to satisfy a lien obtained under the provisions of this Section shall be made upon judgment of foreclosure or order of sale. The City shall have the right to bring an action to enforce the lien in the Superior Court of Coconino County at any time after the recording of the assessment, but failure to enforce the lien by such 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. A prior assessment for the purposes provided in this Section shall not be a bar to subsequent assessment or assessments for such purposes, and any number of liens on the same private property may be enforced in the same action.~~

~~B.— Assessments that are imposed under this section 6-06-001-0019 run against the property until paid and are due and payable in equal annual installments as follows:~~

~~1.— Assessments of less than five hundred dollars shall be paid within one year after the assessment is recorded.~~

~~2.— Assessments of five hundred dollars or more but less than one thousand dollars shall be paid within two years after the assessment is recorded.~~

~~3.— Assessments of one thousand dollars or more but less than five thousand dollars shall be paid within three years after the assessment is recorded.~~

~~4.— Assessments of five thousand dollars or more but less than ten thousand dollars shall be paid within six years after the assessment is recorded.~~

~~5.— Assessments of ten thousand dollars or more shall be paid within ten years after the assessment is recorded.~~

~~C.— An assessment that is past due accrues interest at the rate prescribed by Arizona Revised Statutes, Section 44-1201.~~

~~6-06-001-0020 CRIMINAL PENALTIES:~~

~~A.— A person who is convicted of a violation of this Ordinance is guilty of a Class 1 misdemeanor and shall be sentenced as follows:~~

~~First offense not less than twenty five dollars (\$25.00), nor more than one hundred dollars (\$100.00);~~

~~Second offense not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00);~~

~~Third offense not less than five hundred dollars (\$500.00), nor more than twenty five hundred dollars (\$2,500.00).~~

~~A judge shall not suspend any or all of the impositions of the sentence required by this Section.~~

~~B. Notwithstanding Subsection A of this Section, if a judge finds at the time of sentencing that by a preponderance of the evidence the violations for which the defendant has been convicted have been corrected by the defendant, and that now the defendant is in compliance with the Code, the Court may suspend all or part of the fine.~~

~~6-06-001-0020 SEVERABILITY:~~

~~Each section and each provision of any section of this Chapter shall be deemed severable and the invalidity of any portion of this Chapter shall not affect the validity or enforceability of any other portion.~~