

Chapter 79 Enforcement

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11-79-1: Purpose

This Chapter establishes the responsibilities of various departments, officials and public employees of the City to enforce the requirements of this Title and sets forth the procedures the City will use to identify, abate, remove, and enjoin those uses, structures, or buildings that are deemed to be in violation of this Ordinance.

11-79-2: Commencement of an Action

- A. The City Manager or designee is authorized to commence an enforcement action under this Ordinance by issuing a citation for civil sanctions under this Chapter. They may also seek the issuance of a complaint by the Mesa City Prosecutor for criminal prosecution of habitual offenders as defined in this Chapter.
- B. Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Ordinance, or from enforcing this Ordinance through notices of violations, warnings or through other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances.
- C. Violations of this Ordinance are in addition to any other violation established by law, and this Ordinance shall not be interpreted as limiting the penalties, actions, or abatement procedures which may be taken by the City or other persons under other laws, ordinances, or rules.
- D. Any owner or occupant who causes, permits, facilitates, aids, or abets any violation of this Ordinance, or who fails to perform any act or duty required pursuant to this

Ordinance, is subject to the enforcement provisions of this Ordinance. The owner, occupant, or responsible party may be individually and jointly responsible for the violations, the prescribed civil or criminal sanctions, and for abating the violations and for any associated costs and fees.

11-79-3: Civil Violations and Citation

- A. A civil action for violations of this Ordinance may be commenced by issuance of a citation.
- B. The citation will be substantially in the form established by the City Manager or Designee. It shall advise the responsible party of the violation(s) committed, either by written description of the violations or by designation of the City Code Section that was violated. The Civil Hearing Officer may permit amendments to the citation if substantial rights of the responsible party are not thereby prejudiced. The citation shall direct the responsible party to pay the civil sanction and all applicable fees as specified in [Section 11-79-4](#) within the time period specified on the citation. The citation shall be served by personal service, or by serving the citation pursuant to A.R.S. §9-500.21.
- C. The responsible party shall, within the time period specified on the citation, either pay the fine or appear in person or through an authorized representative before the Clerk of the Civil Hearing Officer and admit or deny the allegations contained in the citation. If the responsible party timely pays the fine and fees, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If the responsible party appears and admits the allegations, the Civil Hearing Officer shall enter judgment against the responsible party in the amount of the fine assessed. If the responsible party appears and denies the allegations contained in the citation, the Civil Hearing Officer shall set the matter for hearing.
- D. The responsible party shall, within 10 days of the issuance of the citation, either pay the civil sanction and the fees, or appear in person or through an attorney before the Civil Hearing Officer and admit or deny the allegations contained in the citation. If the responsible party pays the civil sanction and the fees, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If the responsible party appears and admits the allegations, the Civil Hearing Officer shall enter judgment against the responsible party in the amount of the civil sanction, plus any applicable fees designated in [Section 11-79-4](#). If the responsible party

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appears and denies the allegations contained in the citation, the Civil Hearing Officer shall set the matter for hearing.

- E. If a person served with a citation fails to pay the fine and to appear on or before the time directed to appear or at the time set for hearing by the Civil Hearing Officer, the allegations in the complaint shall be deemed admitted and the Civil Hearing Officer shall enter a finding of responsible and a judgment for the City and impose the appropriate sanction.
- F. All proceedings before the Civil Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Ordinance by a preponderance of the evidence. No pre-hearing discovery shall be permitted except under extraordinary circumstances, as determined by the Civil Hearing Officer. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand.
- G. If, after hearing all evidence the Civil Hearing Officer determines the responsible party is responsible for the alleged violation, and after entering a judgment of responsible and setting a civil sanction as specified in section [11-79-4\(A\)](#), the Civil Hearing Officer may order a compliance hearing and set a date for such hearing. Upon presentation of evidence and testimony by the Code Compliance Officer at the compliance hearing that the violation(s) specified in the complaint has been abated, the Civil Hearing Officer may reduce all or a portion of the civil sanction commensurate with the cost borne by the defendant to achieve compliance or the Civil Hearing Officer may vacate the previous judgment and dismiss the citation(s).
- H. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona Rules of Procedure for Special Actions.
- I. Any civil fine or judgment for civil sanctions taken pursuant to this Article shall constitute a lien against the real property of the responsible party that may be perfected by recording a copy of the judgment with the Maricopa County Recorder. Any judgment for civil fines or penalties pursuant to this Chapter may be collected as any other civil judgment.

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11-79-4: Civil Penalties

- A. Any owner, occupant or responsible party who is found responsible for a civil violation of this Ordinance, whether by admission, default, or after a hearing, shall pay a civil sanction of not less than \$150 or more than \$1,500, per citation. A second finding of responsibility within 24 months of the commission of a prior violation of this Chapter shall result in a civil sanction of not less than \$250 or more than \$2,500. A third finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in a civil sanction of not less than \$500 or more than \$2,500. In addition to the civil sanction, the responsible party shall pay the applicable fees and charges set forth in the City's Development and Sustainability Department (Code Compliance) Schedule of Fees and Charges, and may be ordered to pay any other applicable fees and charges.
- B. The 36 month provision of subsection (A) of this Section shall be calculated by the dates the violations were committed. The owner, occupant, or responsible party shall receive the enhanced sanction upon a finding of responsibility for any violation of this Chapter that was committed within 36 months of the commission of another violation for which the owner or responsible party was convicted or was otherwise found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal.
- C. Each day in which a violation of this Ordinance continues, or the failure to perform any act or duty required by this Ordinance or by the Civil Hearing Officer continues, shall constitute a separate civil offense.

11-79-5: Habitual Offender

- A. A person who commits a violation of this Ordinance after previously having been found responsible for committing 3 or more civil violations of this Ordinance within a 24 month period — whether by admission, by payment of the fine, by default, or by judgment after hearing — shall be guilty of a class 1 criminal misdemeanor. The Mesa City Prosecutor is authorized to file a criminal class 1 complaint in the Mesa City Court against habitual offenders. For purposes of calculating the 24-month period under this paragraph, the dates of the commission of the offenses are the determining factor.
- B. Upon conviction of a violation of this Subsection, the Court may impose a sentence or incarceration not to exceed 6 months in jail; or a fine not to exceed \$2,500, exclusive of penalty assessments prescribed by law; or both. The Court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than \$500 for each count upon which a conviction has been obtained. A judge shall not grant probation to or suspend any part or all of the imposition or execution of a sentence required by this

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Subsection except on the condition that the person pay the mandatory minimum fines as provided in this Subsection.

- C. Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure.

11-79-6: Failure to Provide Evidence of Identity

A person who fails or refuses to provide evidence of his or her identity to a duly authorized agent of the City upon request, when such agent has reasonable cause to believe the person has committed a violation of this Ordinance, is guilty of a misdemeanor. Evidence of identity under this Section shall consist of a person's full name, residence address, and date of birth.

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