

**CITY OF TEMPE
HEARING OFFICER**

Meeting Date: 10/19/2022

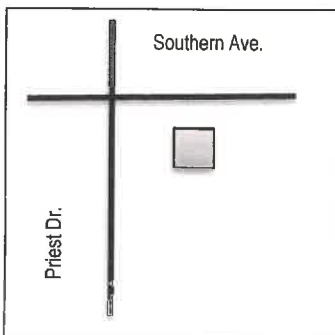
Agenda Item: 2

ACTION: Request approval to abate public nuisance items at the Brown Property located at 1208 W. Malibu Drive. The applicant is the City of Tempe – Code Compliance.

FISCAL IMPACT: \$6,310 for abatement request: remove junk, debris and stored items from front & back yard, landscape cleanup in front & back yards, repair deteriorated fence in back yard.

RECOMMENDATION: Staff – Approval of 180-day open abatement

BACKGROUND INFORMATION: City of Tempe – Code Compliance Section requests approval to abate items in violation of the Tempe City Code at the BROWN PROPERTY. The details of this case represent several months of correspondence for compliance with the property owner. Staff requests the approval of abatement of the following nuisance items under Complaint CE221243 : remove junk, debris and stored items from front & back yard, landscape cleanup in front & back yards, repair deteriorated fence in back yard.



Property Owner
Applicant
Zoning District:
Code Compliance
Inspector:

Kenton R. Brown
City of Tempe – Code Compliance
R1-6, Single Family Residential
Hector Heredia

ATTACHMENTS: Supporting Attachment

STAFF CONTACT: Drew Yocom, Code Administrator (480-858-2190)

Department Director: Jeffrey Tamulevich, Department Director
Legal review by: N/A
Prepared by: Barbara Simons, Code Inspector
Reviewed by: Drew Yocom, Code Administrator

COMMENTS:

Code Compliance is requesting approval to abate the Brown Property located at 1208 W. Malibu Drive, in the R1-6 Single Family Residential district. This case was initiated 02/24/2022, after which Code Compliance has attempted to obtain compliance through correspondence with the property owner regarding violations of the Tempe City Code.

Without the intervention of abatement, the property will continue to deteriorate. It is therefore requested that the City of Tempe Community Development Hearing Officer approve a 180-day open abatement of this public nuisance in accordance with Section 21-53 of the Tempe City Code.

HISTORY & FACTS:

The history and facts of this case are detailed in an attached memo from the Code Compliance Inspector.

ABATEMENT

Planning Application Submittal Form

Part 1 of 2

City of Tempe
 Community Development Department
 31 East 5th Street, Garden Level, Tempe, Arizona 85281
 (480) 350-4311 Fax (480) 350-8677
 Planning Fax (480) 350-8872
<http://www.tempe.gov/planning>



All applications must be accompanied by the required plans, submittal materials, and correct fee(s)

PROJECT INFORMATION - REQUIRED			
PROJECT NAME	KENTON R BROWN PROPERTY ABATEMENT	EXISTING ZONING	R1-6 <input type="checkbox"/>
PROJECT ADDRESS	1208 W MALIBU DR TEMPE AZ 85282	SUITE(S)	<input type="checkbox"/>
PROJECT DESCRIPTION	HEARING OFFICER : 10.19.22 / CE221243	PARCEL No(s)	123.42.012 <input type="checkbox"/>

PROPERTY OWNER INFORMATION - REQUIRED (EXCEPT PRELIMINARY SITE PLAN REVIEW & SIGN TYPE K)			
BUSINESS NAME	ADDRESS		
CONTACT NAME	CITY	STATE	ZIP
EMAIL	PHONE 1	PHONE 2	

I hereby authorize the applicant below to process this application with the City of Tempe.

PROPERTY OWNER SIGNATURE <input checked="" type="checkbox"/>	DATE
--	------

APPLICANT INFORMATION - REQUIRED			
COMPANY / FIRM NAME	City of Tempe Code Compliance	ADDRESS	21 E 6TH ST STE 208
CONTACT NAME	Hector Heredia Code Inspector	CITY	TEMPE
EMAIL	hector_heredia@tempe.gov	PHONE 1	480.350.5462
		PHONE 2	

I hereby attest that this application is accurate and the submitted documents are complete. I acknowledge that if the application is deemed to be incomplete it will be returned to me without review, to be resubmitted with any missing information.

APPLICANT SIGNATURE <input checked="" type="checkbox"/>	DATE
---	------

BUSINESS INFORMATION - REQUIRED FOR USE PERMITS & SIGN DPRs			
BUSINESS NAME	ADDRESS		
CONTACT NAME	CITY	STATE	ZIP
TYPE OF BUSINESS	PHONE	EMAIL	

<input checked="" type="checkbox"/>	APPLICATION (Check all that apply)	QTY	SPECIFIC REQUEST (See Planning Fee Schedule for types)	FOR CITY USE ONLY (Planning record tracking numbers)
<input type="checkbox"/>	A. PRELIMINARY SITE PLAN REVIEW			SPR
<input type="checkbox"/>	B. ADMINISTRATIVE APPLICATIONS			ADM
<input type="checkbox"/>	C. VARIANCES			VAR
<input type="checkbox"/>	D. USE PERMITS / USE PERMIT STANDARDS			ZUP
<input type="checkbox"/>	E. ZONING CODE AMENDMENTS			ZOA ZON
<input type="checkbox"/>	F. PLANNED AREA DEVELOPMENT OVERLAYS			PAD REC
<input type="checkbox"/>	G. SUBDIVISION / CONDOMINIUM PLATS			SBD REC
<input type="checkbox"/>	H. DEVELOPMENT PLAN REVIEW			DPR
<input type="checkbox"/>	I. APPEALS			
<input type="checkbox"/>	J. GENERAL PLAN AMENDMENTS			GPA
<input type="checkbox"/>	K. ZONING VERIFICATION LETTERS			ZVL
<input checked="" type="checkbox"/>	L. ABATEMENTS			CE CM
<input type="checkbox"/>	M. SIGN TYPE K			GO SE
TOTAL NUMBER OF APPLICATIONS		0		

FOR CITY USE ONLY			
DS TRACKING #	FILE APPLICATION WITH CE / CM / IP TRACKING #	DATE RECEIVED (STAMP)	VALIDATION OF PAYMENT (STAMP)
PL TRACKING #			TOTAL APPLICATION FEES
SPR TRACKING # (if 2 nd or 3 rd submittal, please use Planning Resubmittal Form)			RECEIVED BY INTAKE STAFF (INITIALS)

SEE REVERSE SIDE FOR REQUIRED PROJECT DATA



DATE: 08.19.2022
TO: Julie Scofield, Senior Code Inspector
FROM: Hector Heredia, Code Inspector
SUBJECT: CE221243 : KENTON R BROWN PROPERTY ABATEMENT FINDINGS

LOCATION: 1208 W MALIBU DR TEMPE AZ 85282

PARCEL: 123.42.012

OWNER: KENTON R BROWN
1208 W MALIBU DR
TEMPE AZ 85282

FINDINGS:

02.24.2022: Anonymous complaint were received regarding junk / debris across the front yard and a deteriorated landscape / dead tree. This was verified and a first notice was mailed to the property owner.

03.14.2022: An extension was granted after minor actions to clear the junk / debris were noted.

03.21.2022: Another extension was granted after receiving news Mr. Brown was hospitalized.

04.01.2022: Mr. Brown reached out via email stating he was back home after his hospitalization. Mr. Brown also mentioned contacting Tempe Neighbor's Helping Neighbors, TNHN, for assistance with a scheduled onsite inspection on 04.12.2022.

04.07.2022: Anonymous complaints are received regarding junk / debris across the front yard.

04.08.2022: Additional complaints were received regarding the junk / debris and bad odors being omitted from the debris.

04.13.2022: Tempe Neighbor's Helping Neighbors, TNHN, postponed their assessment until 04.27.2022. Adult Protective Services was also notified about the deteriorating situation and involved Care7 in the resolution process.

06.03.2022: Multiple interior concerns were discovered by Adult Protective Services, Care7 & TNHN. Direction by Administration and Management was given to grant a 30-day extension period so a more accurate assessment of the property could take place.

07.01.2022: Anonymous complaints are received regarding junk / debris across the front yard, a deteriorated landscape, and bad odors.

08.05.2022: Code Compliance was informed by participating agencies that Mr. Brown has refused all assistance and was no longer cooperating with the agencies involved. Due to the combined failed efforts provided by Local and State Agencies, a final notice was mailed to the property owner.

08.12.2022: After multiple failed attempts to reach the property owner the abatement packet was turned in for the October 19th , 2022, Hearing Officer.

RECOMMENDATIONS:

I recommend an abatement of the nuisance violations at the property located at 1208 W MALIBU DR due to property owner's failure to bring property into compliance with Tempe City Codes CC 21-3.b.1, CC 21-3.B.8 & CC 21-3.b.15. Kenton R Brown has been given ample time to come into compliance and maintain the property. The property owner has been issued a civil citation and has failed to appear to court. There has been no indication that the property owner will bring the property into compliance. The property represents a health hazard and an eyesore to the community.

Without the intervention of abatement, the property will continue to deteriorate. I therefore make a request to the City of Tempe Community Development Hearing Officer for authorization to abate this public nuisance in accordance with section 21-53 of the Tempe City Code and authorization of multiple abatements for a period not to exceed one hundred eighty (180) days from the previous abatement order.

Respectfully submitted,

Hector Heredia
Code Inspector

ACTION TAKEN: submitted
NAME: Felix S. Coyote
DATE: 8/22/22



NOTICE OF INTENT TO ABATE PUBLIC NUISANCE

DATE: 08.19.2022
CASE # CE221243

**KENTON R BROWN
1208 W MALIBU DR
TEMPE AZ 85282**

This serves as notification of the City of Tempe's intentions regarding the abatement of code violations on the following described property:

LOCATION: 1208 W MALIBU DR TEMPE AZ 85282

PARCEL: 123.42.012

This office will submit this complaint to the Community Development Abatement Hearing Officer located at the Tempe City Council Chambers on 10.19.2022. We are requesting Hearing Officer Authorization to abate this public nuisance in accordance with Section 21-53 of the Tempe City Code by removal and repair of:

Violation of City of Tempe Codes

CC 21-3.b.1

A nuisance includes any one (1) or more of the following conditions: Filthy, littered, debris or trash-covered exterior areas, including exterior areas under any roof not enclosed by the walls, doors or windows of any building; including, but not limited to, areas that contain items such as cans, bottles, wood, metal, plastic, rags, boxes, paper, tires, auto parts; unused, inoperable, worn out or discarded appliances or other household items; lumber, scrap iron, tin and other metal not neatly piled, or anything whatsoever that is or may become a hazard to public health and safety, or that may harbor insect, rodent or vermin infestation. This subsection shall not be deemed to include items kept in covered bins or metal receptacles approved by the County Health Officer or this Code or any other ordinance of the City

CC 21-3.b.8

Any landscaping, visible from public property, that is substantially dead, damaged, or characterized by uncontrolled growth, or presents a deteriorated appearance; uncultivated plants, weeds, tall grass, uncultivated shrubs or growth (whether growing or otherwise) higher than twelve (12) inches; or any dead trees, bushes, shrubs or portions thereof, including stumps; or any palm or similar type tree having dead or dry fronds descending downward from the base of the lowest living frond more than eight (8) feet or dry fronds longer than five (5) feet and closer than eight (8) feet to the ground.

CC 21-3.b.15

Any wall or fence that is missing blocks, boards, or other material, or is otherwise deteriorated so as to constitute a hazard to persons or property. This includes but is not limited to, leaning or damaged fences, fences missing slats or blocks or any other materials that are otherwise broken or damaged in such amounts as to present a deteriorated appearance. All replacement materials shall be uniform, compatible, and consistent with the design thereof.

If the violations have not been corrected within thirty days, our office will proceed with the abatement process. As owner of the property, you have thirty (30) days after receipt of this letter to abate or correct any violation as described below:

- 1. REMOVE ALL JUNK / DEBRIS FROM YOUR ENTIRE PROPERTY BACK TO FRONT.**
- 2. REMOVE GRASS AND WEEDS FROM THE GRAVEL AREAS OF THE FRONT YARD LANDSCAPE.**
- 3. REPAIR ALL SECTIONS OF DETERIORATED FENCING TO A DAMAGE FREE STATE.**

Upon receipt of the Hearing Officer approval to abate this public nuisance, the necessary work will be performed at the expense of the property owner. The cost of this work will be **\$6,310.00**. In addition to the actual cost of abatement, an administrative charge of fifteen (15) percent of the actual cost of abatement or three hundred (\$300) dollars, whichever is greater, for expenses incurred by the city for abatement procedures, and the cost of recording liens and releases will be charged. The recorded lien may bear interest at the legal rate for judgments in the State of Arizona. Administrative charges and the cost of recording liens and releases shall become a lien on the property whether or not the public nuisance is abated by the City.

If you have questions regarding this matter, please contact our office at (480) 350-4311.

Code Inspector: Hector Heredia

Phone Number: 480.350.5462

E-mail: hector_heredia@tempe.gov



Artistic Land Management, Inc.

August 17, 2022

City of Tempe
Attn: Hector Heredia
Code Inspector

RE: Clean-Up at 1208 W. Malibu Dr.

Thank you for giving Artistic Land Management, Inc the opportunity to serve your landscaping needs. Below is our price to provide all labor, equipment, landfill fees, and supervision to perform the work listed below at 1208 W. Malibu Dr, Tempe, AZ. Please give us a call for any questions you may have at 480-821-4966.

Scope of Work

- Remove junk and debris from front & backyard areas
- Clean-up deteriorated overgrown landscape in front & backyard areas
- Repair deteriorated fence in the backyard
- Dispose of removed items off-site
- PD presence on-site for duration of the visit

Total = \$6,310.00

Respectfully,

Jose Hernandez





1208

Tempe
RECYCLES
& SMART

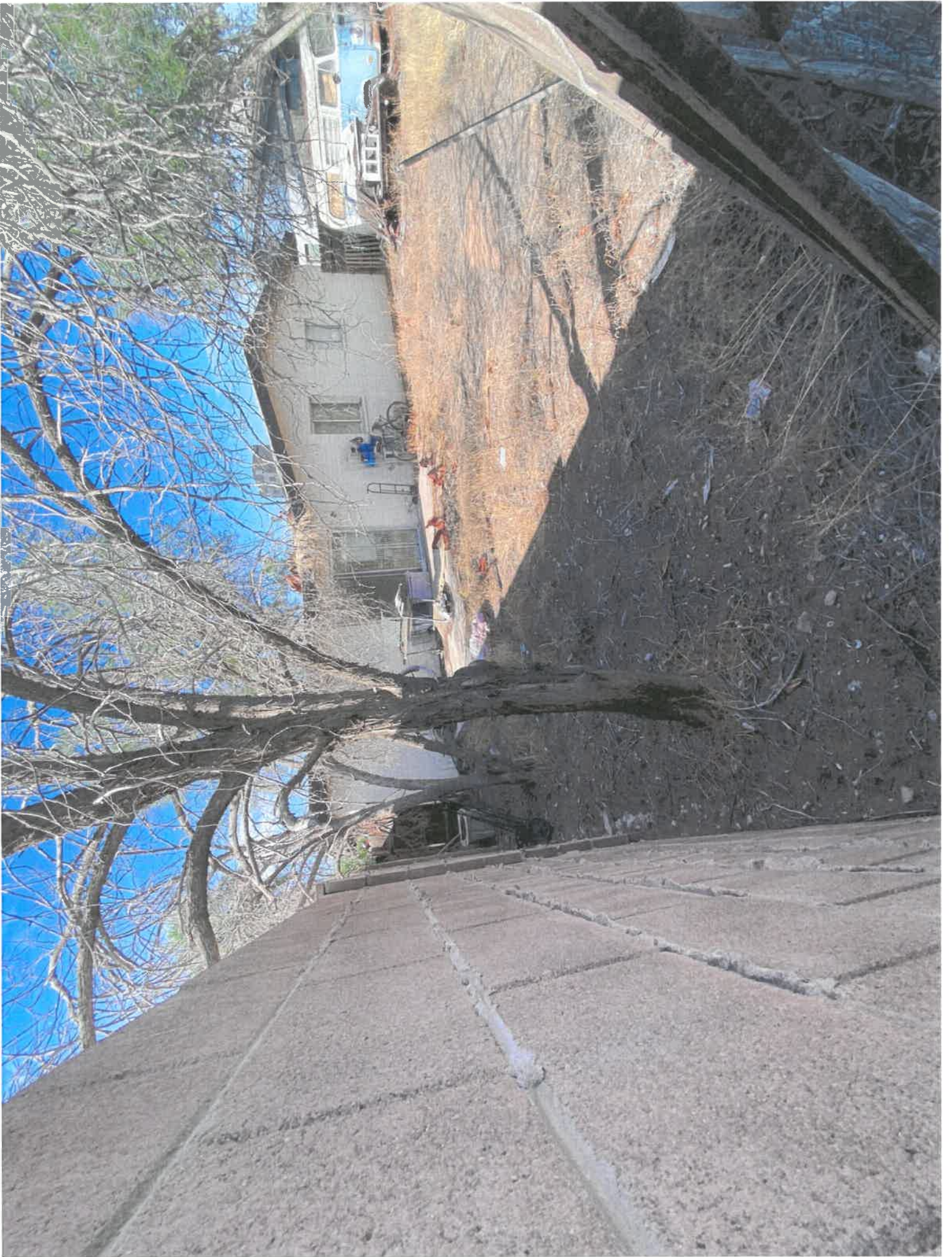
6757019

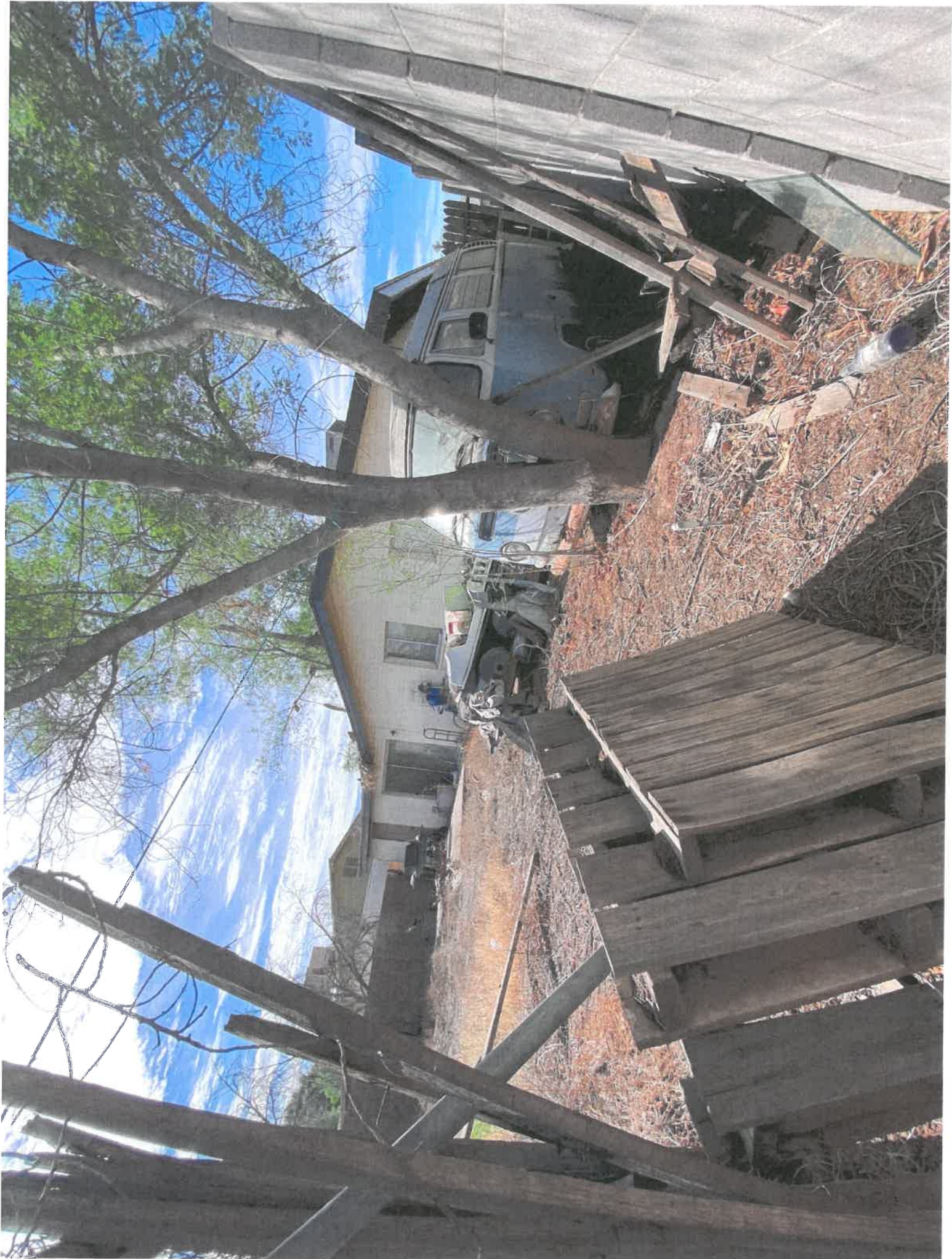














COMMUNITY DEVELOPMENT DEPARTMENT
CODE COMPLIANCE
CORRECTION NOTICE

02/24/2022

BROWN KENTON R
1208 W MALIBU DR
TEMPE, AZ 85251-2242

Case #: CE221243
Site Address: 1208 W MALIBU DR, TEMPE, AZ 85282

This is a notice to inform you that this site was inspected on 02/24/2022 and found to be in violation of the City of Tempe's Zoning and Development Code (ZDC) and/or Nuisances and Property Enhancement Ordinance, Chapter 21, Article I and/or II of the City Code (CC) as noted. Failure to comply may result in civil citation or criminal charges.

Section	Violation
CC 21-3.b.1	Filthy, littered, debris or trash-covered exterior areas, including exterior areas under any roof not enclosed by the walls, doors or windows of any building

**SITE REINSP
ON OR
AFTER**

PLEASE TAKE THE FOLLOWING CORRECTIVE ACTION

CC 21-3.b.1	Please remove all the trash, litter, debris, and stored items from your property's front yard. All storage items must be kept in an enclosed unit classified as a building with four walls and a door / window. An un-enclosed area cannot be maintained as outdoor storage. All debris must be discarded appropriately at city dump sites or designated bins to help diminish a deteriorated appearance. Lastly, make sure that your property is being maintained on a regular basis, if not regularly present please make proper arrangements to address such issues.	03/14/2022
-------------	---	------------

Please contact me if you have questions or need further assistance. Thank you for your cooperation in this matter.

Hector Heredia Jr
Code Inspector

Direct: 480-350-5462
Code Compliance: 480-350-4311
Email: Hector_Heredia@tempe.gov

Please Note: In the event of more than one violation occurring at this property in a calendar year, the property owner may be assessed a reinspection fee of \$82.00 pursuant to City Code Section 21-51, subsection (b).
Civil and Criminal Penalties

City Code: Section 21-3, subsections (b) 1-8, 17-19 and 21; Sections 21-4; 21-13; Section 21-24; Section 21-38, subsections (a-k) and (m-q): 1st occurrence \$200 per violation, 2nd occurrence \$300 per violation, 3rd occurrence \$400 per violation | Sections 21-31; 21-32; 21-33; 21-35; 21-36: 1st occurrence \$300 per violation, 2nd occurrence \$500 per violation, 3rd occurrence \$700 per violation | Section 21-3, subsections (b) 9-16 and 20; Sections 21-34, 21-37; Section 21-38, subsection (l): 1st occurrence \$400 per violation, 2nd occurrence \$700 per violation, 3rd occurrence \$1,000 per violation. | Section 21-4 (b) Habitual Offender: 1st occurrence \$550 in addition to other fines, 2nd occurrence \$1,050 in addition to other fines, 3rd occurrence, \$1,550 in addition to other fines. | Section 21-25: \$1,050 per violation. | Zoning and Development Code: 1st occurrence \$170 per violation, 2nd occurrence \$420 per violation, 3rd occurrence \$820 per violation | The city has authority to abate the violation should the owner neglect, fail or refuse to correct the violation within 30 days and to assess a lien against the property for the cost of the abatement. | The city prosecutor is authorized to file a criminal class 1 misdemeanor complaint in the Tempe Municipal Court for violations of these codes.



COMMUNITY DEVELOPMENT DEPARTMENT
CODE COMPLIANCE
FINAL CORRECTION NOTICE

08/02/2022

BROWN KENTON R
1208 W MALIBU DR
TEMPE, AZ 85251-2242

Case #: CE221243
Site Address: 1208 W MALIBU DR, TEMPE, AZ 85282

This is a notice to inform you that this site was inspected on 08/02/2022 and found to be in violation of the City of Tempe's Zoning and Development Code (ZDC) and/or Nuisances and Property Enhancement Ordinance, Chapter 21, Article I and/or II of the City Code (CC) as noted. Failure to comply may result in civil citation or criminal charges.

Section	Violation
CC 21-3.b.1	Filthy, littered, debris or trash-covered exterior areas, including exterior areas under any roof not enclosed by the walls, doors or windows of any building
CC 21-3.b.10	Any putrid, unsound or unwholesome bones, meat, hides, skins, of any dead animal or garbage, human excreta, sewage or other offensive substances
CC 21-3.b.15	A wall or fence deteriorated in appearance or which constitutes a hazard
CC 21-3.b.8	Any landscaping, visible from public property, that is substantially dead, damaged, or characterize by uncontrolled growth, or presents a deteriorated appearance
CC 21-4.a.2.b	Deteriorated exterior painted surfaces with loose, cracked, scaling, chipping, or peeling paint, visible from a public area, in such amounts as to present a deteriorated appearance

PLEASE TAKE THE FOLLOWING CORRECTIVE ACTION		SITE REINSP ON OR AFTER
CC 21-3.b.1	Please remove all the trash, litter, debris, and stored items from your property's front and back yard areas. All storage items must be kept in an enclosed unit classified as a building with four walls and a door / window. An un-enclosed area cannot be maintained as outdoor storage. All debris must be discarded appropriately at city dump sites or designated bins to help diminish a deteriorated appearance. Lastly, make sure that your property is being maintained on a regular basis, if not regularly present please make proper arrangements to address such issues.	08/12/2022
CC 21-3.b.10	Please take all the proper precautionary measures necessary to eliminate all animal feces and bad odors on a regular basis from your residence / properties front yard areas. Please always deodorize and clean the affected areas to prevent an insect infestation or bacterial hazards for all pedestrians or neighbors. Make sure to always discard animal waste in an appropriate fashion and in an appropriate trash bin or designated area. Lastly, make sure that your property is being maintained on a regular basis, if not regularly present please make proper arrangements to address such issues.	08/12/2022

- | | | |
|---------------|--|------------|
| CC 21-3.b.15 | Please take all the precautionary measures necessary to repair / restore your property's back yard fencing to its original, damage free and standing state including free of all deterioration. Please consider using like materials from the surrounding area so it does not appear to be a deteriorated state or a potential hazard for any pedestrian. This means replacing any missing planks, chain links or bricks including deteriorated paint to unify the appearance of the restoration project. All debris must be discarded appropriately at city dump sites or designated bins to help diminish a deteriorated appearance. Lastly, make sure that your property is being maintained on a regular basis, if not regularly present please make proper arrangements to address such issues. | 08/12/2022 |
| CC 21-3.b.8 | Please water your front yard vegetation to bring it back to a living state, or please trim and maintain vegetation so it does not appear to be in a state of uncontrolled growth, dry or dead. This also includes eliminating grass and weeds through the gravel and dead tree limbs. Discard all landscaping debris appropriately and in designated bins or city dump sites. Lastly, make sure that your property is being maintained on a regular basis, if not regularly present please make proper arrangements to address such issues. | 08/12/2022 |
| CC 21-4.a.2.b | Please repair / restore all exterior paint that has begun to loosen, crack, is scaling, chipping, or peeling from the front of your property to its original damage free state. Please use like materials to diminish a deteriorated state of appearance and to unify the overall restoration of the property. Lastly, make sure that your property is being maintained on a regular basis, if not regularly present please make proper arrangements to address such issues. | 08/12/2022 |

This is the final attempt to reach you regarding the above noted. These issues must be addressed. If your property is not brought into compliance before or on the due date a citation will be issued. There will be no more notices sent to your property due to negligence of the pending violations in a twelve-month period. As a final reminder, if your yard is out of compliance again in this period for the same violation/s, citations will be issued without further warning or notice. Please contact me by phone at your earliest convenience to discuss the details or for clarification.

Please contact me if you have questions or need further assistance. Thank you for your cooperation in this matter.

Hector Heredia Jr
Code Inspector

Direct: 480-350-5462
Code Compliance: 480-350-4311
Email: Hector_Heredia@tempe.gov

Please Note: In the event of more than one violation occurring at this property in a calendar year, the property owner may be assessed a reinspection fee of \$82.00 pursuant to City Code Section 21-51, subsection (b).

Civil and Criminal Penalties

City Code: Section 21-3, subsections (b) 1-8, 17-19 and 21; Sections 21-4; 21-13; Section 21-24; Section 21-38, subsections (a-k) and (m-q): 1st occurrence \$200 per violation, 2nd occurrence \$300 per violation, 3rd occurrence \$400 per violation | Sections 21-31; 21-32; 21-33; 21-35; 21-36: 1st occurrence \$300 per violation, 2nd occurrence \$500 per violation, 3rd occurrence \$700 per violation | Section 21-3, subsections (b) 9-16 and 20; Sections 21-34, 21-37; Section 21-38, subsection (l): 1st occurrence \$400 per violation, 2nd occurrence \$700 per violation, 3rd occurrence \$1,000 per violation. | Section 21-4 (b) Habitual Offender: 1st occurrence \$550 in addition to other fines, 2nd occurrence \$1,050 in addition to other fines, 3rd occurrence, \$1,550 in addition to other fines. | Section 21-25: \$1,050 per violation. | Zoning and Development Code: 1st occurrence \$170 per violation, 2nd occurrence \$420 per violation, 3rd occurrence \$820 per violation | The city has authority to abate the violation should the owner neglect, fail or refuse to correct the violation within 30 days and to assess a lien against the property for the cost of the abatement. | The city prosecutor is authorized to file a criminal class 1 misdemeanor complaint in the Tempe Municipal Court for violations of these codes.