

**ORDINANCE NO. 2449**

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE LAND DEVELOPMENT CODE OF GILBERT, ARIZONA, CHAPTER III SUBDIVISION REGULATIONS, BY ADOPTING NEW ARTICLE 1.4 PENALTIES AND ENFORCEMENT, TO INCLUDE NEW SECTION 1.401 INVALID PERMITS AND APPROVALS, SECTION 1.402 ENFORCEMENT RESPONSIBILITIES, SECTION 1.403 VIOLATION; NOTICE AND OPPORTUNITY TO CORRECT, SECTION 1.404 VIOLATIONS AND CITATIONS, SECTION 1.405 PENALTIES, SECTION 1.406 HABITUAL OFFENDERS, SECTION 1.407 ABATEMENT, SECTION 1.408 CUMULATIVE PROCEDURES AND REMEDIES, AND SECTION 1.409 FAILURE TO PROVIDE EVIDENCE OF IDENTITY, ALL RELATED TO PROVIDING PENALTIES FOR VIOLATIONS OF AND AUTHORIZING ENFORCEMENT OF THE SUBDIVISION REGULATIONS, MINOR LAND DIVISION AND MINOR SUBDIVISION REGULATIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

The Land Development Code of Gilbert, Arizona, Chapter III Subdivision Regulations, is hereby amended by adding new Article 1.4 Penalties and Enforcement including Sections 1.401 Invalid Permits and Approvals, 1.402 Enforcement Responsibilities, 1.403 Violation; Notice and Opportunity to Correct, 1.404 Violations and Citations, 1.405 Penalties, 1.406 Habitual Offenders, 1.407 Abatement, 1.408 Cumulative Procedures and Remedies, 1.409 Failure to Provide Evidence of Identity to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**ARTICLE 1.4 PENALTIES AND ENFORCEMENT**

**1.401 INVALID PERMITS AND APPROVALS**

ANY PERMIT ISSUED OR ADMINISTRATIVE APPROVAL GRANTED IN CONFLICT WITH ANY PROVISION OF THE SUBDIVISION REGULATIONS, AN APPROVED AND RECORDED FINAL PLAT, OR AN APPROVED MINOR LAND DIVISION OR MINOR SUBDIVISION PLAT IS VOID.

### **1.402 ENFORCEMENT RESPONSIBILITIES**

A. **PLAN REVIEW AND INSPECTION DIVISION OF THE DEVELOPMENT SERVICES DEPARTMENT.** PRIOR TO ISSUANCE OF BUILDING PERMITS, THE PLAN REVIEW AND INSPECTION DIVISION SHALL ASCERTAIN THAT PLANS PRESENTED WITH THE BUILDING PERMIT APPLICATION COMPLY WITH THE APPROVED FINAL PLAT, MINOR LAND DIVISION OR MINOR SUBDIVISION PLAT, SUBJECT TO THE REQUIREMENTS OF THE SUBDIVISION REGULATIONS.

B. **CODE COMPLIANCE ADMINISTRATOR.** THE CODE COMPLIANCE ADMINISTRATOR SHALL ENFORCE THE PROVISIONS OF THE SUBDIVISION REGULATIONS AND IS AUTHORIZED TO PROVIDE NOTICE OF VIOLATIONS, ISSUE CITATIONS FOR VIOLATIONS AND TO STOP ANY WORK UNDERTAKEN NOT IN COMPLIANCE WITH ANY PROVISION OF A FINAL PLAT, SUBDIVISION REGULATIONS, MINOR LAND DIVISION OR MINOR SUBDIVISION PLAT.

C. **TOWN ATTORNEY.** THE TOWN ATTORNEY MAY COMMENCE AN ACTION IN SUPERIOR COURT TO ABATE A VIOLATION OF THE SUBDIVISION REGULATIONS.

### **1.403 VIOLATION; NOTICE AND OPPORTUNITY TO CORRECT**

A. **NOTICE.** BEFORE ISSUING A CITATION FOR A VIOLATION OF THE SUBDIVISION REGULATIONS, AN APPROVED AND RECORDED FINAL PLAT OR AN APPROVED MINOR LAND DIVISION OR MINOR SUBDIVISION PLAT, THE CODE COMPLIANCE ADMINISTRATOR OR HIS AGENT SHALL PROVIDE A WRITTEN NOTICE OF THE VIOLATION TO THE PROPERTY OWNER, PERSON IN CONTROL, OR AUTHORIZED AGENT OF THE PROPERTY. THE NOTICE SHALL SET FORTH:

1. THE VIOLATION;
2. WHAT IS REQUIRED TO BRING THE PROPERTY INTO COMPLIANCE;
3. THE TIME PERIOD ALLOWED TO BRING THE PROPERTY INTO COMPLIANCE.

B. **TIME PERIOD.** THE TIME PERIOD PROVIDED TO CORRECT VIOLATIONS OF THE SUBDIVISION REGULATIONS,

AN APPROVED AND RECORDED FINAL PLAT OR AN APPROVED MINOR LAND DIVISION OR MINOR SUBDIVISION PLAT SHALL BE A MINIMUM OF 10 DAYS.

C. ***FAILURE TO RECEIVE NOTICE.*** FAILURE OF THE PROPERTY OWNER, PERSON IN CONTROL, OR AUTHORIZED AGENT OF THE PROPERTY TO RECEIVE A NOTICE SHALL NOT PRECLUDE ISSUANCE OF A CITATION.

#### **1.404 VIOLATIONS AND CITATIONS**

A. IF A PROPERTY OWNER, PERSON IN CONTROL OR AUTHORIZED AGENT CONTINUES TO BE IN VIOLATION OF THE SUBDIVISION REGULATIONS, AN APPROVED AND RECORDED FINAL PLAT OR AN APPROVED MINOR LAND DIVISION OR MINOR SUBDIVISION PLAT PAST THE TIME SET FORTH IN THE NOTICE OF VIOLATION, A CITATION SHALL BE ISSUED TO THE PROPERTY OWNER, PERSON IN CONTROL, OR AUTHORIZED AGENT OF THE PROPERTY.

B. A CIVIL ACTION FOR VIOLATIONS SHALL BE COMMENCED BY FILING OF THE CITATION IN THE TOWN OF GILBERT MUNICIPAL COURT.

C. CITATIONS MAY BE ISSUED BY THE CODE COMPLIANCE ADMINISTRATOR, A CODE COMPLIANCE INSPECTOR, OR A TOWN OF GILBERT POLICE OFFICER.

D. EACH DAY A VIOLATION CONTINUES, OR THE FAILURE TO PERFORM ANY ACT OR DUTY REQUIRED BY THE SUBDIVISION REGULATIONS, AN APPROVED AND RECORDED FINAL PLAT OR AN APPROVED MINOR LAND DIVISION OR MINOR SUBDIVISION PLAT OR BY THE TOWN OF GILBERT MUNICIPAL COURT CONTINUES, SHALL CONSTITUTE A SEPARATE CIVIL OFFENSE.

E. EVERY CIVIL ACTION OR PROCEEDING UNDER THIS SECTION SHALL BE COMMENCED AND PROSECUTED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA RELATING TO CIVIL TRAFFIC PROCEDURES AND THE ARIZONA RULES OF PROCEDURE IN CIVIL TRAFFIC VIOLATION CASES.

#### **1.405 PENALTIES**

A. A CITATION ISSUED PURSUANT TO SECTION 4.104: VIOLATIONS AND CITATIONS SHALL DIRECT THE PERSON TO

WHOM THE CITATION IS ISSUED TO PAY A FINE IN THE AMOUNT SET FORTH IN THE TOWN OF GILBERT'S MUNICIPAL COURT ADOPTED SCHEDULE OF FINES WITHIN 10 DAYS OF THE ISSUANCE OF THE CITATION OR TO APPEAR BEFORE THE TOWN OF GILBERT MUNICIPAL COURT. PAYMENT OF THE FINE SHALL CONSTITUTE A FINDING OF RESPONSIBILITY FOR THE VIOLATION FOR PURPOSES OF SECTION 4.106: HABITUAL OFFENDERS.

B. UPON A FINDING BY THE TOWN OF GILBERT MUNICIPAL COURT THAT A PERSON IS RESPONSIBLE FOR A CIVIL VIOLATION, THE PERSON, CORPORATION, OR OTHER LEGAL ENTITY THAT VIOLATES THE SUBDIVISION REGULATIONS, AN APPROVED AND RECORDED FINAL PLAT OR AN APPROVED MINOR LAND DIVISION OR MINOR SUBDIVISION PLAT, THE TOWN OF GILBERT MUNICIPAL COURT SHALL IMPOSE A CIVIL FINE OF NOT MORE THAN \$500.00 FOR EACH VIOLATION.

C. ANY JUDGMENT FOR CIVIL FINES OR PENALTIES MAY BE COLLECTED AS ANY OTHER CIVIL JUDGMENT, AS PROVIDED FOR IN THE ARIZONA REVISED STATUTES.

#### **1.406 HABITUAL OFFENDERS**

A. ANY PERSON FOUND RESPONSIBLE BY THE TOWN OF GILBERT MUNICIPAL COURT FOR COMMITTING 3 OR MORE CIVIL VIOLATIONS OF THE SUBDIVISION REGULATIONS, AN APPROVED AND RECORDED FINAL PLAT OR AN APPROVED MINOR LAND DIVISION OR MINOR SUBDIVISION PLAT WITHIN A 24 MONTH PERIOD, WHETHER BY ADMISSION, BY PAYMENT OF THE FINE, BY DEFAULT OR BY JUDGMENT AFTER HEARING SHALL BE DETERMINED TO BE A HABITUAL OFFENDER. FOR PURPOSES OF CALCULATING THE 24 MONTH PERIOD UNDER THIS PARAGRAPH, THE DATES OF THE COMMISSION OF THE OFFENSES ARE THE DETERMINING FACTOR.

B. A HABITUAL OFFENDER WHO SUBSEQUENTLY VIOLATES THE SUBDIVISION REGULATIONS, AN APPROVED AND RECORDED FINAL PLAT OR AN APPROVED MINOR LAND DIVISION OR MINOR SUBDIVISION PLAT SHALL BE GUILTY OF A CLASS 1 MISDEMEANOR OFFENSE.

C. UPON THE CONVICTION OF A HABITUAL OFFENDER FOR A VIOLATION OF THE SUBDIVISION REGULATIONS, AN APPROVED AND RECORDED FINAL PLAT OR AN APPROVED

MINOR LAND DIVISION OR MINOR SUBDIVISION PLAT, THE COURT MAY:

1. IMPOSE A SENTENCE OF INCARCERATION NOT TO EXCEED 6 MONTHS IN JAIL; OR
2. IMPOSE A FINE NOT TO EXCEED \$2,500.00, EXCLUSIVE OF PENALTY ASSESSMENTS PRESCRIBED BY LAW; OR
3. IMPOSE A TERM OF PROBATION; OR
4. IMPOSE ANY COMBINATION OF INCARCERATION, FINE, AND PROBATION.

D. NOTWITHSTANDING THE ABOVE ELECTIVE PENALTY, UPON CONVICTION OF A HABITUAL OFFENDER OF A VIOLATION OF THE SUBDIVISION REGULATIONS, AN APPROVED AND RECORDED FINAL PLAT OR AN APPROVED MINOR LAND DIVISION OR MINOR SUBDIVISION PLAT, THE COURT SHALL IMPOSE A FINE OF NOT LESS THAN \$500.00 FOR EACH COUNT UPON WHICH A CONVICTION IS OBTAINED.

E. A JUDGE SHALL NOT GRANT PROBATION TO A HABITUAL OFFENDER OR SUSPEND ANY PART OF A SENTENCE OR FINE IMPOSED UPON A HABITUAL OFFENDER FOR ANY SENTENCE REQUIRED BY THIS SUBSECTION, EXCEPT ON THE CONDITION THAT THE HABITUAL OFFENDER PAYS THE MANDATORY MINIMUM FINES AS PROVIDED IN THIS SECTION.

F. EVERY ACTION OR PROCEEDING UNDER THIS SECTION SHALL BE COMMENCED AND PROSECUTED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA RELATING TO MISDEMEANORS AND THE ARIZONA RULES OF CRIMINAL PROCEDURE.

#### **4.107 ABATEMENT**

THE TOWN OF GILBERT MUNICIPAL COURT MAY ORDER ABATEMENT OF A VIOLATION OF THIS CHAPTER PURSUANT TO ARS § 9-499.

#### **1.407 CUMULATIVE PROCEDURES AND REMEDIES**

THE PROCEDURES AND REMEDIES PROVIDED FOR HEREIN SHALL BE CUMULATIVE AND IN ADDITION TO ANY OTHER

PROCEDURES AND REMEDIES TO WHICH THE TOWN MAY BE ENTITLED BY LAW OR EQUITY.

**1.408 FAILURE TO PROVIDE EVIDENCE OF IDENTITY**

A PERSON WHO FAILS OR REFUSES TO PROVIDE EVIDENCE OF HIS OR HER IDENTITY TO THE TOWN OF GILBERT BUILDING OFFICIAL, A BUILDING INSPECTOR, THE CODE COMPLIANCE ADMINISTRATOR, A CODE COMPLIANCE INSPECTOR, OR A POLICE OFFICER OR ANY OTHER AUTHORIZED AGENT OF THE TOWN UPON REQUEST, WHEN SUCH AGENT HAS REASONABLE CAUSE TO BELIEVE THE PERSON HAS COMMITTED A VIOLATION OF THE SUBDIVISION REGULATIONS, AN APPROVED AND RECORDED FINAL PLAT OR AN APPROVED MINOR LAND DIVISION OR MINOR SUBDIVISION PLAT, IS GUILTY OF A CLASS 1 MISDEMEANOR. EVIDENCE OF IDENTITY SHALL CONSIST OF A PERSON'S FULL NAME, RESIDENCE ADDRESS, AND DATE OF BIRTH.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this 17<sup>TH</sup> day of September, 2013, by the following vote:

AYES: Cook, Cooper, Daniels, Lewis, Petersen, Ray, Taylor

NAYES: None ABSENT: None

EXCUSED: None ABSTAINED: None

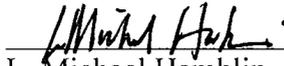
APPROVED this 17<sup>th</sup> day of September, 2013.

  
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John W. Lewis, Mayor

ATTEST:

  
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Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

  
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L. Michael Hamblin  
Town Attorney

I, CATHERINE A. TEMPLETON, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 2449 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE 17<sup>TH</sup> DAY OF SEPTEMBER, 2013, WAS POSTED IN FOUR PLACES ON THE 19th DAY OF September, 2013.

  
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Catherine A. Templeton, Town Clerk