

ORDINANCE 419-08

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF QUEEN CREEK, MARICOPA COUNTY, ARIZONA, AMENDING CHAPTER 10, HEALTH AND SANITATION BY ADDING ARTICLE 10-7, AIR QUALITY AND FUGITIVE DUST, TO THE QUEEN CREEK TOWN CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING PENALTIES FOR VIOLATION.

BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AS FOLLOWS:

Chapter 10 is hereby amended by adding Article 10-7, Air Quality and Fugitive Dust, as follows:

AIR QUALITY AND FUGITIVE DUST

Section 10-7-1	PURPOSE
Section 10-7-2	DEFINITIONS
Section 10-7-3	ENFORCEMENT, VIOLATIONS, NOTICES AND PENALTIES
Section 10-7-4	VEHICLE PARKING AND USE ON VACANT LOTS
Section 10-7-5	OPERATION OF VEHICLES ON PUBLIC AND PRIVATE PROPERTY
Section 10-7-6	PARKING, MANEUVERING, INGRESS AND EGRESS
Section 10-7-7	LEAF BLOWER RESTRICTIONS
Section 10-7-8	COMPLIANCE MONITORING
Section 10-7-9	VIOLATIONS DEEMED A PUBLIC NUISANCE
Section 10-7-10	REMEDIES NOT EXCLUSIVE
Section 10-7-11	COMPATIBILITY WITH OTHER REGULATIONS
Section 10-7-12	SEVERABILITY

Section 10-7-1 Purpose

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of Queen Creek by improving air quality through the regulation of Fugitive Dust and PM-10 particles to the maximum extent practicable as required by federal and state law. The Town hereby finds and declares that this ordinance is not a land use law. The Town hereby finds and declares the objectives of this ordinance are:

- A. To regulate the contribution of Fugitive Dust and PM-10 from any Town resident, developer or visitor; and
- B. To establish legal authority to implement all inspection, surveillance, monitoring, and enforcement procedures necessary for compliance with this ordinance; and
- C. To meet requirements imposed by state and federal law; and
- D. To limit or prohibit situations that could be recognized as public nuisances; and
- E. To allow for the protection of the public's health and safety, including, transportation or traffic control, health and sanitation and pollution control.

Section 10-7-2 Definitions

For the purposes of this ordinance, the following shall mean:

- A. **"Area A"**- means the part of the greater Phoenix metropolitan area where specific pollution control programs are in place for ozone, carbon monoxide, and particulate matter. As defined in Arizona Revised Statutes (ARS) §49-541(1).
- B. **"County Dust Control Permit"** – means a permit issued by Maricopa County evidencing that a dust generating operation has a satisfactory dust control plan in place approved by the Maricopa County Air Quality Department.
- C. **"Fugitive Dust"** – means the particulate matter not collected by a capture system that is entrained in the ambient air and is caused from human and/or natural activities, such as, but not limited to, movement of soil, vehicles, equipment, blasting, and wind. For the purpose of this ordinance, fugitive dust does not include particulate matter emitted directly from the exhaust of motor vehicles and other internal combustion engines, from portable brazing, soldering, or welding equipment, or from piledrivers.
- D. **"Landscape Debris"** – means debris generated or accumulated as a result of, or moved in the course of, landscape operations. Landscape debris includes, but is not limited to, grass clippings, leaves, branches, vegetative matter, rubbish, soil and rock.
- E. **"Leaf Blower"** – means any device that generates a stream of air that is designed, or used, to move landscape debris.
- F. **"Off-Road Vehicle"** – means a self-propelled device and its appurtenances, including, but not limited to, off-road or all-terrain equipment, trucks, cars, motorcycles,

motorbikes, or motor buggies and excluding devices moved by human power or used exclusively on stationary rails or tracks and excluding motorized wheelchairs.

- G. **"PM-10"** -- means the standard adopted by the Environmental Protection Agency that focuses on smaller particulates in the air that are likely responsible for adverse health effects because of their ability to reach the lower regions of the respiratory tract. The PM-10 standard includes particles with an aerodynamic diameter smaller than or equal to ten (10) microns (micrometers) as measured by the applicable state and federal reference test methods.
- H. **"Person"** -- means any individual, organization, public or private corporation or other entity recognized by law, company, partnership, firm, association or society of persons, the Federal Government and any of its departments or agencies, or the State and any of its departments or agencies, or political subdivisions.
- I. **"Public Roadway"** -- means any street, alley, road, highway or thoroughfare of any kind that is used by the public or that is open to the public as a matter of right, for the purpose of vehicular travel.
- J. **"Town"** -- means the Town of Queen Creek, Arizona.
- K. **"Unstabilized"** -- means a surface that has not been paved or stabilized with asphaltic concrete, cement concrete, hardscape, penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate, decomposed granite cover, crushed granite cover, aggregate cover, gravel cover, or grass or other continuous vegetative cover, or any combination of such paving or stabilizing.
- L. **"Vacant Lot"** -- means any of the following:
 - 1. An unsubdivided or undeveloped tract of land.
 - 2. A subdivided residential, industrial, institutional, governmental, or commercial lot that contains no approved or permitted buildings, structures, or uses of a temporary or permanent nature.
 - 3. A partially developed residential, industrial, institutional, governmental, or commercial lot.
 - 4. For the purpose of this ordinance, a vacant lot is not a public roadway.
- M. **"Vehicle"** -- means a self propelled device and its appurtenances, excluding devices moved by human power or used exclusively on stationary rails or tracks.

Section 10-7-3 Enforcement, Violations, Notices and Penalties

A. Responsibility for Administration

1. The Enforcement Officer, acting through and designated by the Town Manager, shall administer, implement and enforce the provisions of this ordinance involving air quality and fugitive dust. The Enforcement Officer may enforce the provisions of this ordinance when reasonable cause exists to believe that any person has violated or is in violation of any provision of this ordinance.
2. The term "Enforcement Officer" means any person, who is either an employee, agent or independent contractor, authorized by the Town Manager to administer, implement and enforce the provisions of this ordinance and who has authority to enforce the Town of Queen Creek rules, regulations, resolutions and ordinances. The "Enforcement Officer" may include more than one person, including a civil hearing officer acting in compliance with A.R.S. §9-500.21.

B. Violations, Notices and Penalties of General Applicability for Ordinance

1. Unless an alternative process or penalty is expressly indicated within this ordinance or the Town Code, when the Enforcement Officer has reasonable cause to believe that any person has violated or is in violation of any provision of this ordinance, the Enforcement Officer shall issue, for the first violation of this ordinance, a warning notice stating which requirement of the ordinance was violated.
 2. Unless an alternative process or penalty is expressly indicated within this ordinance or the Town Code, the Enforcement Officer may impose a civil penalty of \$50 for the second violation of this ordinance. Upon a third violation of this ordinance, the Enforcement Officer may impose a civil penalty of \$100. After the fourth and subsequent violations of this ordinance, the Enforcement Officer may impose a civil penalty of \$250.
- C. This Ordinance shall not apply during a period of public emergency as declared by the Town, state authorities or federal authorities or if the operation is directed by a peace officer or other public authority.
- D. Pursuant to A.R.S. §9-500.04(H), the requirements of Sections 10-7-4, 10-7-6 and 10-7-7 of this ordinance do not apply to any site that has a permit issued by a control officer as defined in A.R.S. §49-471 for the control of fugitive dust from dust generating operations.

Section 10-7-4 Vehicle Parking and Use on Vacant Lots

A person shall not park or use a vehicle on an unstabilized vacant lot within the Town. This section does not apply to sites that have been issued a County Dust Control Permit for the control of fugitive dust from dust generating operations.

Section 10-7-5

Operation of Vehicles on Public and Private Property

- A. A person shall not operate any vehicle, including off-road vehicles, on unpaved public property that is not a public roadway or lawful easement, without lawful authority. Lawful authority shall consist of rules, regulations, or orders of a federal agency, this state, a county or municipality, which shall be made available to the public by any one of the following methods:
1. A sign to designate the property is/as open. Such sign shall be in compliance with the standard travel management sign protocol used by Southwest Land Management Agencies and shall at a minimum be conspicuously placed at all points of vehicular access and contain the following information: "Travel Must Remain On Designated Routes." Copies of the standard travel management sign protocol are available for review at the Maricopa County Air Quality Department, 1001 North Central Avenue, Phoenix, AZ, 85004;
 2. Orders of a government land management agency;
 3. Most current maps approved by such government land management agency; and
 4. Virtual posting from a government land management agency.
- B. A person shall not operate any vehicle, including off-road vehicles, on unpaved private property that is not a private road, street or lawful easement and that is closed by the landowner by rule or regulation of a federal agency, this state, a county or a municipality or by a proper posting, without the consent of the lawful owner. Consent of the lawful owner consists of either or both of the following:
1. A sign to designate the property is/as open. Such sign shall be in compliance with the standard travel management sign protocol used by Southwest Land Management Agencies and shall at a minimum be conspicuously placed at all points of vehicular access and contain the following information: "Travel Must Remain On Designated Routes." Copies of the standard travel management sign protocol are available for review at the Maricopa County Air Quality Department, 1001 North Central Avenue, Phoenix, AZ, 85004;
 2. Prior written permission which contains the following:
 - (a) the name, address and telephone number of the person granting permission for the use of the property;
 - (b) a description of the interest the person granting permission has in the property (i.e., property owner, lessee or agent);
 - (c) if the person granting permission is not the owner of the property, the written permission shall also contain the name, address and telephone number of the property owner;
 - (d) specific period of time for which permission for the use of the property is being granted; and

- (e) The signature of the person granting permission for the use of the property.
- C. Whenever any person is stopped by an Enforcement Officer for a violation of Section 10-7-5 of this ordinance, he/she shall, upon the request of the Enforcement Officer identify or present the lawful authority or consent of the lawful owner required in this section
- D. The property owner, person entitled to immediate possession of the property, or invitee who has lawful authority may operate such vehicles on the property if such use does not violate any other applicable laws.
- E. Exemptions:
1. This Section 10-7-5 shall not apply to the operation of vehicles used in the normal course of business or the normal course of government operations.
 2. This Section 10-7-5 shall not apply to operations directed by utilities for operation, distribution and transmission systems provided that both of the following conditions are satisfied: (a) operations are performed with a marked company vehicle; and (b) if operations are performed with a personal vehicle, then identification of the company shall be visible and readable by the public.
- F. As mandated by A.R.S. §9-500.27, a person who violates this section 10-7-5 of the ordinance is guilty of a class 3 misdemeanor.
- G. As mandated by A.R.S. §9-500.27, if a person is deemed to have violated this section 10-7-5, in addition to or in lieu of a fine, a judge may order the person to perform at least eight (8) but not more than twenty-four (24) hours of community restitution or to complete an approved safety course related to the off-highway operation of motor vehicles, or both.

Section 10-7-6 Parking, Maneuvering, Ingress and Egress

- A. Other than Residential. All persons who are owners, tenants or operators shall maintain parking, maneuvering, ingress and egress areas at developments other than residential buildings with four (4) or fewer units with one or more of the following dustproof paving methods:
1. Asphaltic concrete;
 2. Cement concrete;
 3. Penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate;
 4. A stabilization method approved by the Town.

- B. Residential. All persons who are owners, tenants or operators shall maintain parking, maneuvering, ingress and egress areas that are three thousand (3,000) square feet or more in size at residential buildings with four (4) or fewer units with a paving or stabilization method authorized by the Town Code or permit.

Section 10-7-7 Leaf Blower Restrictions

- A. A person shall not operate a leaf blower in a manner that causes landscape debris to be blown into a public roadway.
- B. No person who is an employee or contractor of the Town shall operate a leaf blower on any high pollution advisory day forecast by the department of environmental quality, except while in vacuum mode.

Section 10-7-8 Compliance Monitoring

The Town shall be permitted to enter and inspect property subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.

- A. If a property owner has security measures in force, which require proper identification and clearance before entry into its premises, the property owner shall make the necessary arrangements to allow access to representatives of the Town, including the Enforcement Officer.
- B. Any temporary or permanent obstruction to safe and easy access to the property to be inspected shall be promptly removed by the property owner at the written or oral request of the Town, including the Enforcement Officer, and shall not be replaced. The costs of such access shall be borne by the property owner.

Section 10-7-9 Violations Deemed A Public Nuisance

In addition to the enforcement process and penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Section 10-7-10 Remedies Not Exclusive

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Town to seek cumulative remedies.

The Town may recover all attorneys' fees, court costs and other expenses associated with enforcement of this ordinance, including monitoring expenses.

Section 10-7-11 Compatibility With Other Regulations

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards of human health or the environment shall control.

Section 10-7-12 Severability

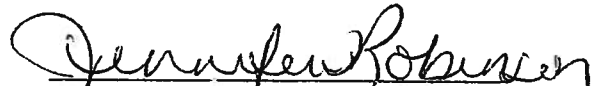
The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provision or application of this ordinance.

PASSED AND ADOPTED by the Mayor and Council of the Town of Queen Creek, Arizona, this 20th day of February 2008.

FOR THE TOWN OF QUEEN CREEK:

ATTESTED TO:


Arthur Sanders, Mayor


Jennifer F. Robinson, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:


John Kross, Town Manager


Fredda J. Bisman, Town Attorney