

ADOPTED BY THE
MAYOR AND COUNCIL

September 13, 2004

ORDINANCE NO. 10037

RELATING TO DEVELOPMENT AND ENVIRONMENT; AMENDING CHAPTER 29 ARTICLE IX OF THE TUCSON CODE, CLARIFYING AND REVISING THE LANDFILL ORDINANCE AND PROVIDING FOR PENALTIES FOR NON-COMPLIANCE; AND DECLARING AN EMERGENCY.

SECTION 1. Chapter 29, Article IX, of the Tucson Code is hereby amended to read as follows:

Sec. 29-20. Purpose.

The purpose of this article is to provide reasonable measures to protect the public's health and safety from potential adverse effects of methane gas.

Sec. 29-21. Definitions.

A. "Landfill" means either:

1. Any area designated by the Director of Environmental Services (Director) to be a known Landfill; or
2. Any area outside the boundaries designated in Section 29-21 A1 known or discovered to contain significant sub-surface biodegradable solid waste.

Maps showing the boundaries of the Landfills designated in Section 29-21 A1 shall be maintained at Environmental Services and a legal description shall be recorded with the Pima County Recorder. The Director may modify designated Landfill boundaries whenever the Director determines that the facts warrant modifications. Whenever the Director modifies the boundaries of a designated landfill, notice shall be given to owners of affected properties by first class mail and a modified legal description shall be recorded.

City Clerk File Note: DD:nb:tm 9/21/2004
This document reflects the changes
adopted at the Mayor and Council
meeting of September 13, 2004.

- B. “Developer” means the person(s) or entities responsible for Development subject to this section, including but not limited to, the Owner of the property being developed, the lessee of the property being developed, the manager of the property being developed and the builder.
- C. “Responsible Party” means any natural person, corporation, trust, partnership, or other entity that leases the property at issue or holds legal title, beneficial title, equitable title, or that controls any entity that holds such title to the property at issue. Control of an entity means the right to determine without resort to any other, the decisions and actions of the entity.
- D. “Development” means any activity that triggers the obligation to obtain a permit under the City of Tucson Building Code. Development also includes public works projects, development by utility companies, and placement of manufactured housing.
- E. “Satisfactory operating conditions” means that the Landfill gas control system is capable of operating as designed per the current engineering design, at full capacity with all barriers, probes, pipes, collector wells and blowers intact and functional.
- F. “Director” means the Director of Environmental Services or the Director’s authorized designee.

Sec. 29-22. Scope of Application.

This article shall apply to any Landfill within the City limits, whether privately or publicly owned or operated.

Existing Development Exception. The Development regulations set forth in section 29-24 shall not apply to any addition to a building.

Sec. 29-23. Development on or within one hundred (100) feet of a Landfill.

- A. All proposed Development, on or within one hundred (100) feet from a Landfill, shall receive the necessary building permit only after approval of a Landfill Methane Development Plan. The plan shall meet the following criteria to the extent applicable:
 - 1. Site Assessment. The plan shall indicate the location of the Landfill or Landfills; (more than one Landfill may affect the site). The Developer is responsible for defining the waste boundary as needed to prepare the plan. Additionally, the plan shall describe the following information: operators of the Landfill and dates of operation, the depth to groundwater, groundwater test results, Landfill depth, type of Landfill waste, floodplain designations, gas data, gas monitoring system information, gas extraction system information including a diagram showing system layout, recent and historical aerial photographs and Landfill history. Any previously unidentified buried waste

encountered after initial approval of the Development plan shall be reported to the Director within seven (7) working days.

2. Methane Production, Migration and Monitoring. The Landfill Methane Development Plan shall describe existing methane conditions within the proposed plan area. The Developer may be required to take measures to protect the safety of the proposed Development which may include, but not be limited to, installation of monitoring devices and establishment of mechanisms for regular monitoring for a duration of time appropriate to the scope of the Landfill activity. The Landfill methane plan shall demonstrate, in a manner approved by the City, that any potential migration of methane to the surface or adjoining areas will not endanger any future occupant or user of the proposed Development. The plan must be approved by the Director. Monitoring for methane migration may be required pre and post construction.
3. Methane Control. Where required by the City, due to the presence or proximity of methane, the Landfill Methane Development Plan shall include design and installation of an approved system for the control, prevention, extraction or mitigation of methane in order to ensure protection of the proposed Development.
4. Construction Specifications. The Landfill Methane Development Plan shall specify the special steps to be taken in the construction of the Development to accommodate the special characteristics of the Landfill including, but not limited to, provisions for control of methane migration into structures, properly engineered drainage, protection against subsidence and other necessary requirements.
5. Professional Certification for the Development Plan. Development plans submitted to the City pursuant to this section shall be sealed by a professional engineer or geologist, registered with the Arizona Board of Technical Registration, who is knowledgeable regarding Landfills, methane gas and the health and safety issues that arise when developing on or in the vicinity of Landfills.

B. Waiver.

One (1) or more of the requirements of this section may be waived or satisfied by the City based upon documented evidence presented by the applicant regarding the site to the Director. The waiver may be granted upon the determination by the Director that there are substantial mitigating factors justifying such a waiver and that there is no substantial risk to the public in the granting of such a waiver. Even if a waiver is granted under this section, the Responsible Party or Developer shall comply with the public notice requirements.

C. **Monitoring Time Requirements.**

Upon request of the Developer or Responsible Party, modifications to the monitoring schedule may be approved by the Tucson Fire Chief or his designee upon a showing that there is no significant risk to public health due to methane activity.

D. **Approval Authority.**

The approvals and determinations on behalf of the City as set forth in this Section, unless otherwise specified, shall be made by the Director.

E. **Appeals.**

Any person aggrieved by a decision of any City representatives under this section shall have the right to appeal that decision to the Board of Appeals which is established by Chapter 6, Article II of the Tucson Code, section 6-12 et.seq., and the procedures established thereunder.

Sec. 29-24. Development between one hundred (100) and five hundred (500) feet from a Landfill.

Any proposed Development which is to be located between one hundred (100) and five hundred (500) feet from a Landfill, shall receive the necessary building permits only after City approval of a self-certification statement. The certification statement form must state that the following factors, which may affect Development, have been considered and appropriate steps have been taken to prevent any adverse impact from the Landfill(s):

A. **Site Assessment.**

The Developer shall identify and review, from available information, the location of the Landfill, the operators of the Landfill, dates of operation, depth to groundwater, groundwater test results, Landfill depth, type of Landfill waste, floodplain designations, gas data, gas monitoring system information, gas extraction system information, recent and historical aerial photographs and Landfill history.

B. **Methane Condition and Monitoring.**

The Developer shall identify and review, from available information, any existing methane condition within the Landfill area and any potential migration of methane to the surface or adjoining areas that may endanger any future occupant or user of the proposed Development.

C. **Methane Limitation or Extraction System.**

The Developer shall identify and review from available information any existing systems for the extraction or mitigation of methane if appropriate to the proposed Development.

D. Construction Specifications.

The Developer shall identify and review, from available information, the special steps that may be taken in the construction of the Development to accommodate the special characteristics of the Landfill including provisions for control of methane migration within structures.

E. Submitting Self-Certification Statements.

The Self-Certification statement form shall be submitted to the Director and is subject to review and approval by the Director. The Self-Certification statement shall be submitted on a standardized form provided by the Director.

Sec. 29-25. Reporting Obligations.

- A. The Developer of any property, on which any type of Landfill gas monitoring system or Landfill gas collection or control system has been installed, shall provide the Tucson Fire Department with a report, the frequency of which is to be determined by the Tucson Fire Department. The report shall contain readings of percentages of methane, oxygen and carbon dioxide gases, gas analyzer used and calibration information. The report shall also contain a verification statement stating "This system is in satisfactory operating condition as defined in Section 29-21 E. of the Tucson Code", or shall describe the deficiencies and provide a repair timetable. The Developer of the subject property shall further be required to designate to the City a person or entity that will take responsibility for the operation, maintenance and repair of the system as well as conduct, certify, document and report future methane monitoring.
- B. The Responsible Party of any property where methane monitoring, prevention, mitigation or extraction equipment or systems have been installed to meet any requirement under City, State or Federal agreement, order, regulation or law shall maintain the equipment or systems in satisfactory operating condition. The Responsible Party shall provide the Tucson Fire Department with a report, the frequency of which is to be determined by the Tucson Fire Department. The report shall contain readings of percentages of methane, oxygen and carbon dioxide gases, gas analyzer used and calibration information. The report shall also contain a verification statement stating, "This system is in satisfactory operating condition as defined in Section 29-21 E. of the Tucson Code", or shall describe the deficiencies and provide a repair timetable schedule.
- C. The City may set repair completion time limitations for equipment in less than satisfactory operating condition. If the repair does not meet the original design, a new plan must be submitted to the Director. If, after notice and time to make repairs the equipment remains in violation of this section, the City may enter the property and make repairs as needed to bring the equipment to satisfactory operating condition and charge the Developer or Responsible Party the cost of such repairs.

- D. Methane gas detected through monitoring pursuant to this article, in concentrations of 5 percent or more by volume in subsurface probes at the property boundary or 1.25 percent or more by volume within structures, shall be immediately reported by the Developer or Responsible Party to: (1) the Tucson Fire Department, (2) the Arizona Department of Environmental Quality and (3) the Owner or operator of any adjacent Landfill. In addition, this exceedence shall be reported within seven (7) calendar days to all Owners and occupants of property wholly or partially within one hundred (100) feet of the detected methane.
- E. Any monitoring or maintenance required by this section may be terminated pursuant to section 29-23 (C).
- F. The Developer or Responsible Party shall notify the Director forty-eight (48) hours before methane control systems are to be installed.
- G. The City may inspect any system undergoing installation or any equipment subject to 29-25 (B) upon twenty four (24) hours notice and may require that the equipment be activated to demonstrate its operational status.
- H. Failure to meet the requirements of this section, including refusal to allow access pursuant to 29-25 (G), shall be a separate violation for each day the non-complying condition persists after the City provides written notice of the violation and penalties shall be imposed per diem. A citation for a violation of this section shall constitute notice of the non-complying condition.

Sec. 29-26. Public Notice.

The Developer of any new or existing structure which is partially or entirely within five hundred (500) feet of, or on, a Landfill shall provide to any new tenant or any purchaser of the property a notice that the property is subject to this article and identification of the location where the information required herein may be obtained. A similar notice shall also be recorded with the title for each individual lot upon sale by a subdivider of property to the initial Owner/occupant. The notice required under this section shall include:

1. A statement that the residence is located within five hundred (500) feet of a Landfill;
2. Identification of public jurisdictional agencies such as the Tucson Fire Department, Environmental Services and the Arizona Department of Environmental Quality, that can provide further information regarding the Landfill and regulation of the Landfill, including the appropriate agencies for any complaints regarding methane gases;
3. The Self-Certification statement form required under section 29-24 and

4. The Responsible Party's obligations as set forth in sec. 29-25 (B).

Sec. 29-27. Cooperation of Landfill Owners and operators.

The Responsible Party for a property containing a Landfill, in whole or in part, shall cooperate with the City where necessary to characterize the Landfill, or to install methane monitoring or control mechanisms. Owners and operators and former Owners and operators of Landfills are required to provide, within a reasonable period of time, all information in their possession or control, which is reasonably required by Developer or Responsible Party to comply with this article.

Sec. 29-28. City access.

A. The Responsible Party for a property within the City on which a Landfill is located, in whole or in part, shall allow access to City representatives to such property for purposes of investigating and remediating methane conditions or contamination of the air, soil, surface water or groundwater under the following terms:

1. Unless public health or safety is in immediate danger, the City shall give seven (7) days notice in advance of its intent to enter the property.

The notice shall specify:

- a. The date of entry;
- b. the location of entry;
- c. the purpose of entry;
- d. the equipment and personnel that may be involved;
- e. the duration of entry;
- f. the type of equipment that may be installed;
- g. the location and duration of installation, if any; and
- h. the person to contact with questions.

B. Unless public health and safety is in immediate danger, the City will attempt to accommodate future Development plans before installation of equipment if requested by Responsible Party. Prior to any such installation, the City shall notify the Responsible Party of the provisions of 29-28 C.

C. The City will accommodate one request for relocation of installed equipment at City expense, to the extent allowed by any remediation plan, upon a showing of reasonable necessity providing there were no building plans, including concept plans, at the time equipment was installed.

Sec. 29-29. Violation declared a civil infraction.

A. It shall be a civil infraction for any person to violate, disobey, omit, neglect, refuse to comply with, or to resist the enforcement of any provisions of this article.

- B. If any property or improvement thereon is used in violation of the provisions of this article, the city attorney in addition to other remedies, may institute any appropriate action or proceeding to restrain, correct or abate such violations.
- C. The Director shall report violations of section 29-23, 29-24, 29-27 and 29-28 to the City Attorney. The Fire Chief or his designee shall either proceed to issue a citation for violation of section 29-25 or report such violation to the City Attorney. Violations for which citations are issued shall be heard under the procedures set forth in the Tucson Code. The issuance of any citation shall stay all building permits, pending resolution of the matter.

SECTION 2. If any provisions of this ordinance, or the application thereof to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or circumstance, and to this end, the provisions of this ordinance are severable.

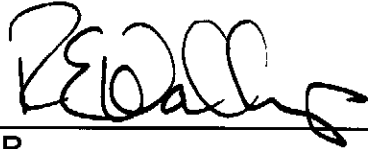
SECTION 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 4. Whereas, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this ordinance become immediately

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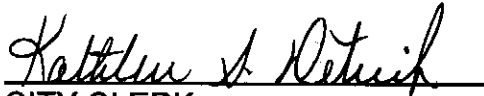
effective, an emergency is hereby declared to exist, and this ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, Sept. 13, 2004



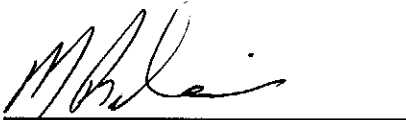
MAYOR

ATTEST:



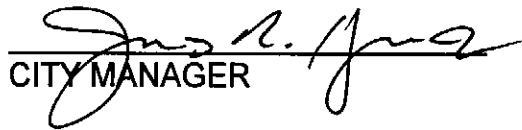
CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

REVIEWED BY:



CITY MANAGER

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