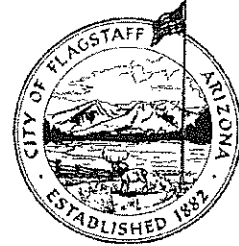


**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**



**To:** The Honorable Mayor and City Council  
**From:** James B. Speed, (928) 779-7680  
Flagstaff City Attorney's Office  
**Date:** July 27, 2009  
**Meeting Date:** August 18, 2009

**Title:** Consideration of Ordinance No. 2009-25: An ordinance amending Title 6, Police Regulations, Chapter 6-01, General Offenses, by repealing Section 6-01-001-0001, Abandoned Containers.

**Recommended Action:**

At the Council Meeting of, August 18, 2009: Read Ordinance No. 2009-25 by title only.

At the Council Meeting of September 2, 2009: Read Ordinance No. 2009-25 for the final time by title only and adopt.

**ACTION SUMMARY:**

As a consequence of legislation related to abandoned refrigerators passed by the Arizona State Legislature in 1978, and the resultant inability of the City to legislate in this field, Flagstaff City Code Section 6-01-001-0001, Abandoned Containers, was rendered obsolete. The present ordinance is put forward as part of an effort by the City Attorney's Office to remove or update those archaic, obsolete and ineffective ordinances currently found within the Flagstaff City Code.

**DISCUSSION:**

**Background/History:**

At the Tuesday, October 25, 1960 City Council Meeting the Flagstaff City Council considered Ordinance No. 510, an ordinance revising all "ordinances of a general and permanent nature" and codifying them in one document, "The Municipal Code of the City of Flagstaff, 1960". One of the additions presented in the "Municipal Code of the City of Flagstaff, 1960" was Section 6-8-1, Abandoned Containers, today's Section 6-01-001-0001. While a renumbering of all City ordinances has occurred in the intervening years, the language of the Abandoned Container ordinance has remained unchanged. It reads as follows:

**SECTION 6-01-001-0001 ABANDONED CONTAINERS:**

It shall be unlawful for any person to leave or permit to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, structure or dwelling under his control, in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or other container which has door or lid, snaplock or other locking device which may

not be released from the inside, without first removing said door or lid, snaplock or other locking device.

In 1978 the Arizona State Legislature amended Arizona Revised Statutes Title 36, Public Health and Safety, by adding Article 4, Abandoned Refrigerators. That statute states

[a] person who abandons, discards, stores or keeps in any place accessible to children, or who, as the owner, lessee or manager, permits to remain on premises under this control, in any place accessible to children, a refrigerator, icebox, freezer cabinet or similar container of a capacity of not less than one and one-half cubic feet, which is no longer used for refrigeration purposes, without the attached doors, hinges, lids or latches being removed, is guilty of a class 3 misdemeanor.

A.R.S. § 36-1651. As a result of the State Legislature enacting this statute the City of Flagstaff's ability to legislate in the field of abandoned refrigerators/airtight containers appears to be preempted. The overlap between the State's abandoned refrigerator statute and the City's abandoned container ordinance are numerous. Both focus their attention on refrigerators, iceboxes and other similar containers; both predicate enforcement on the containers' accessibility to children; both emphasize the need to remove the door or locking device in order to avoid the penalties of the ordinance/statute; both impose liability on an individual who allows abandoned containers to remain on premises "under his control"; both are applicable to containers that have been "abandoned, discarded or unattended" or are "no longer used for refrigeration purposes." In short, as the purpose of the State and City in enacting their respective legislation was identical, protecting children from the dangers posed by abandoned refrigerators, it is not surprising that the language they employed, and the provisions they crafted, were virtually identical. While F.C.C. 6-01-001-0001 undoubtedly provided a valuable tool for law enforcement when it was passed in October 1960, its usefulness came to an end with the adoption of A.R.S. § 36-1651 in 1978.

**Key Considerations:**

While it is impossible to determine the exact number of F.C.C. 6-01-001-0001 citations issued between its enactment in 1960 and the passage of A.R.S. § 36-1651 in 1978, it appears that from mid-80's to the present the ordinance has been cited twice: once in 1986 and the other in 2005. A review of the 2005 report reveals that the facts detailed by the officer meet the necessary elements of an A.R.S. § 36-1651 violation.

The Police Department has reviewed this Ordinance and is in favor of repealing F.C.C. 6-01-001-0001.

Should Council vote to repeal this ordinance Flagstaff Police Officers will be alerted and instructed that they should begin to cite A.R.S. § 36-1651 when they observe abandoned refrigerators or other airtight containers accessible to children.

**Community Benefits and Considerations:**

Removing superfluous sections from the Flagstaff City Code results in a clearer, more accessible code.

**Community Involvement:**

None

**Financial Implications:**


A violation of A.R.S. § 36-1651 constitutes a class 3 misdemeanor, while those individuals who violate F.C.C. 6-01-001-0001 are guilty of a class 1 misdemeanor – another provision preempted by the workings of the State statute. A class 1 misdemeanor’s maximum fine is \$2500.00 plus surcharges, while a class 3 misdemeanor carries a maximum fine of \$500.00 plus surcharges. As a result, Municipal Court judges would be forced to cap their sentences at the lower of the two fine amounts, a situation that, potentially, could result in a loss of \$2000.00 per violation. However, considering the unlikelihood that an individual found guilty of violating F.C.C. 6-01-001-0001 would ever be fined the maximum amount, as well as the infrequency with which this ordinance has been employed in the past, the financial implications are negligible.

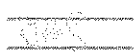
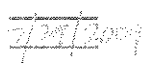
**Options and Alternatives:**

- 1. Do not adopt Ordinance No. 2009-25.

**Attachments/Exhibits:**

Ordinance No. 2009-25

  
\_\_\_\_\_  
**Division Director** (Acknowledgment that all reviews have been completed and required approvals initiated below.)

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
_____	BIDS/PURCHASES	_____	_____	FINANCE/BUDGET	_____
_____	GRANTS	_____	_____	CONTRACTS	_____
	LEGAL		_____	IGAS	_____
_____	_____	_____	_____	_____	_____

DATE OF COUNCIL APPROVAL: \_\_\_\_\_

ORDINANCE NO. 2009-25

**AN ORDINANCE AMENDING TITLE 6, POLICE REGULATIONS, CHAPTER 6-01, GENERAL OFFENSES, BY REPEALING SECTION 6-01-001-0001, ABANDONED CONTAINERS.**

WHEREAS, in October, 1960 the City of Flagstaff adopted the "Municipal Code of the City of Flagstaff, 1960", one element of which was SECTION 6-01-001-0001, ABANDONED CONTAINERS, an ordinance protecting children from the dangers posed by abandoned refrigerators and other airtight containers; and

WHEREAS, in 1978 the Legislature of the State of Arizona enacted legislation, A.R.S. § 36-1651, Abandoned refrigerators, rendering this Ordinance obsolete;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

SECTION 1. That Section 6-01-001-0001, ABANDONED CONTAINERS, is hereby repealed.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY