

6-7-18

This is CA is now NULL & VOID
Per JOEL because the CUP is now
IN effect

COMPLIANCE AGREEMENT BETWEEN CITY OF APACHE JUNCTION AND MEHMOOD MOHIUDDIN

RECITALS

A) Mehmood Mohiuddin ("Owner"), owns five parcels of real property at or near or adjacent to 2341 N. Apache Trail and 2304 N. Cortez Road, Apache Junction, Arizona (APNs 100-25-043A, 100-25-010A, 100-25-001E, 100-25-003 and 100-25-001C) (hereinafter the "Property") and depicted in Attachment A;

B) The City of Apache Junction Development Services Department issued a "Notice of Zoning Violation" to owner on October 5, 2017 (Code Case COD2017-01122) (see Attachment B) alleging certain code and development agreement violations.

C) Owner has taken some steps to abide by applicable code provisions.

D) Owner has taken initial steps to prepare a complete zoning submittal for a Conditional Use Permit ("CUP") applicable to portions of the Property.

E) Owner desires the enforcement of COD2017-01122 be held in abeyance and the City temporarily forebear further enforcement on this matter pending Owner's punctual and completed performance of his compliance commitments of this Agreement.

AGREEMENT

1. Owner agrees to use/operate the bull riding arena consistent with the terms of the Third Amendment to Economic Development Agreement and to only start bull riding events after 8:00 p.m. and end them no later than 10 p.m., and only on Thursdays and Saturdays.

2. Owner will file, on or before Thursday, December 28, 2017, a completed CUP application with the Apache Junction Development Services Department for uses on the Property.

3. Owner will diligently follow all city processes in furtherance of the CUP, to perfect the application and presentation at the duly noticed public hearing(s).

4. Owner will use APN 100-25-001C for overflow parking relating only to the Hitching Post Pizza Pub and Hitching Post Steakhouse restaurant operation on APN 100-25-043A pending the final disposition of Owner's application for broader authorization of uses under a passed and adopted CUP at the City's planning and zoning commission hearing and/or possible city council appeal.

5. If the CUP is denied by the City, Owner will cease and desist from using APN 100-25-001C for parking in connection with uses on APN 100-25-043A within ten (10) calendar days of such denial.

6. Owner understands that continuing violations of the city code and development agreement after any denial of a CUP application are enforceable by criminal and civil processes, and has discussed this possibility with his attorney.

7. Owner intentionally, knowingly and voluntarily enters into this Compliance Agreement and has discussed its meaning and effect with his attorney and understands all possible eventualities of CUP passage and denial and violations of the city code and development agreement.

AGREED


Property Owner

Mehmoor Molkhuddin
Printed Name

11/27/17
Date


City of Apache Junction
Development Services Director

Lawrence J. Kirel
Printed Name

11/27-17
Date

COUNSEL APPROVAL AS TO FORM:

I have read this Agreement and have determined such Agreement is in proper form and is entered into within the powers of and authority granted under the laws of the State of Arizona.



Ralph Pew

Nov. 20, 2017
Date

I have read this Agreement and have determined such Agreement is in proper form and is entered into within the powers of and authority granted under the laws of the State of Arizona.



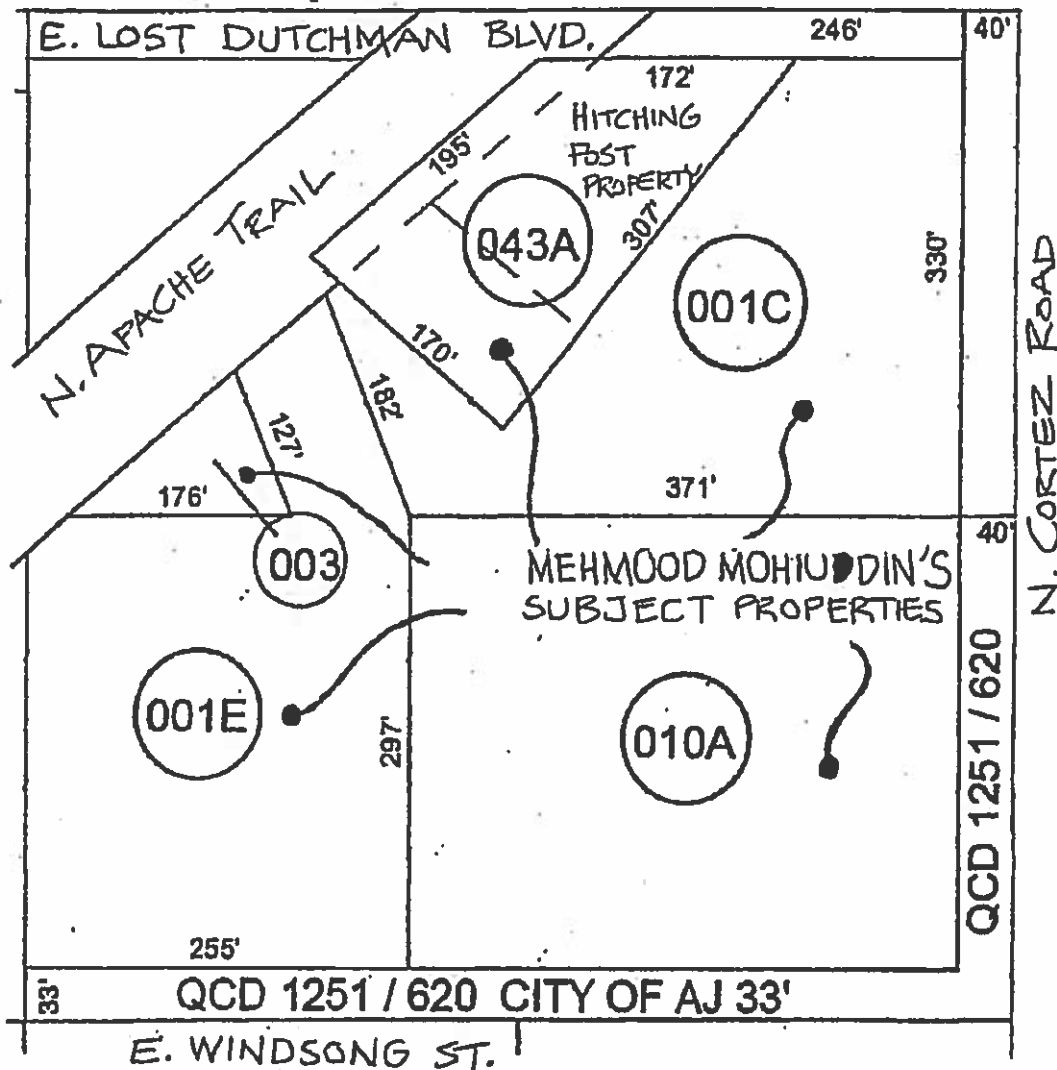
Richard J. Stern, City Attorney

11.27.17
Date

Attachment A

PROPERTIES OWNED BY MEHMOOD MOHIUDDIN

PINAL COUNTY ASSESSOR PARCELS
100-25-001C, 001E, 003, 010A AND 043A.



ZONING + VICINITY MAP

ALL PROPERTIES SHOWN ARE ZONED
B-1 (GENERAL COMMERCIAL DISTRICT).



Attachment B



City of Apache Junction
Development Services Department



**NOTICE OF VIOLATION
ZONING**

CODE CASE #: COD2017-01122

Date: October 5, 2017

Sent via Certified Mail, Return Receipt Requested and
U.S. Regular First Class Mail

Mr. Mehmood Mohiuddin
c/o: Dash In and Mini Mart/Hitching Post/HP Steakhouse
2341 N. Apache Trail
Apache Junction, AZ 85119

Address of Property in Violation: 2341 N. Apache Trail & 2304 North Cortez Road

Parcel Number(s): 100-25-043A; 100-25-001C; 100-25-010A; 100-25-001E; 100-25-0030

Legal Description of Property:

100-25-043A -- COM @ N4 COR SEC 15-1N-8E TH W-286.4 TH S-49D W-50.74 TO POB TH CONT S-49D W-195.27 TH S-48D E-170 TH N-38D E-307.49 TH W-172 TO POB, FOR REF SEE BK 22 OF SURVEYS PG 71 .85 AC

100-25-001C -- BEG AT N1/4 CR OF SEC 15-1N-8E TH W-286.4' TO E LINE OF HWY R/W THS S-49 DEG W-246.01' TH S-21 DEG W-182.68' TH E-484.38' TH N-330' TO POB EXC: A PCL BEG AT N1/4 CR TH W-286.4' TH S-49 DEG W-50' TO POB TH CONT S-49 DEG W-195.27' TH S-48 DEG E-170' TH N-38 DEG E-307.49' TH W-172' TO POB & LESS E-7' THEREOF SEC 15 1N-8E 2.13 AC

100-25-010A -- BEG AT A PT 255.13' E OF SW COR OF S1/2 NE NE NW OF SEC 15-1N-8E; TH N-329.80' TO E-404.87' TH S-329.80' TH W-404.87' TO POB EXC FOR THE E-33' & S-33' THEREOF 3.07 AC (133729 SQ FT)

100-25-001E -- BEG N1/4 CR SEC 15-1N-8E TH W-286.4' S-49 DEG 19' 35 W-246' TO POB TH CONT S-49 DEG 19'35 W-78.23' S-21 DEG 44'43 E-127.92' W-175.5' S-329.8' E-255' N-329.8' N-21 DEG 44'43 W-182.68' TO POB SEC 15-1N-8E 2.19 AC + OR - (95396 SQ FT)

100-25-0030 -- PT OF N1/2 NE NE NW OF SEC 15-1N-8E .25 AC (10890 SQ FT)

Owner(s) of Record: Mehmood Mohiuddin

Tax Bill Mailing Address: 2345 North Apache Trail, Apache Junction, AZ 85119 and 2304 N Cortez Rd., Apache Junction, AZ 85119

The City of Apache Junction has adopted a Zoning Ordinance to protect and promote the public health, safety and general welfare. The applicable ordinances can be found in the Apache Junction

City Code, Volume II, Land Development Code, which can be read here-
http://www.amlegal.com/codes/client/apache-junction_az/.

You are in violation of Apache Junction Land Development Code; Chapter 1: Zoning Ordinance, Article 1-16: Administration, Section 1-16-13, Development Agreements (see attached Exhibit A). You have an Economic Development Agreement (including amendments) with the City of Apache Junction with the hours of operation of the bull riding activity specified in the Second Amendment (dated October 1, 2013), Paragraph B, § 3, Developer Obligations, and are limited to Thursday and Saturday evenings from 8:00 p.m. to 10:00 p.m.

On November 17, 2016, you were previously notified that you were violating the development agreement by operating outside of the hours specified in the agreement (see attached letter as Exhibit B). Attached as Exhibit C is a City of Apache Junction Police Department incident report for incident number 170916007 dated 09/16/17. The report is clear, in that you admit to operating the bull riding activity outside of the approved hours. This is again, a clear violation of the economic development agreement and constitutes a violation of the city zoning code.

You were also notified in that same letter dated November 17, 2016, that in order to use APN 100-25-001C for parking you would need an amendment to the development agreement. Using this parcel to the east of the Hitching Post/Dash-In/HP Steakhouse also constitutes a violation of the economic development agreement.

Statement of Violations and Corrections:

Violation(s) observed: A violation of the economic development agreement constitutes a violation of Article 1-16, Section 1-16-13.

- (1) Operating the bull riding venue outside of the hours stipulated in the Economic Development Agreement.***
- (2) Parking on parcel 100-25-001C is not permitted by the economic development agreement.***

CORRECTIVE ACTIONS TO BE TAKEN:

Cease and desist all violations. The City's repeated attempts to have the above issues corrected or abated have not been successful, therefore we are issuing this formal Notice of Violation and requiring that the conditions noted above be corrected and abated within **21 calendar days**. A City of Apache Junction code enforcement officer will perform a re-inspection to verify compliance on **October 26, 2017**.

****Please note the following*** - Failure to comply- make requested corrections or abate the noted conditions may result in the filing of a civil or criminal misdemeanor case.

*****And also*** - Failure to comply, failure to make requested corrections or abate the noted conditions, may result in an administrative or court abatement action by the city, for which the owner or responsible person will be financially liable through a lien process which may include foreclosure of the property.

If you have any questions regarding this Notice and the action required please contact Senior Code Compliance Officer Kimberly Wilson at (480) 474-5109 or kwilson@ajcity.net.

Appeal Rights

You have the right to appeal this decision to the Board of Adjustment and Appeals ("BAS") within 30 calendar days of this letter. To exercise this right, you must request an application form and, submit a complete appeal application form with all necessary supporting documentation and information. A narrative specifying the grounds of the appeal should also be included. The complete application packet and the accompanying fees must be submitted with the zoning administrator at the development services department, 300 E. Superstition Blvd., Apache Junction, Arizona, 85119. In most circumstances, an appeal to the board stays all proceedings in the matter appealed. However, the applicant is encouraged to review A.R.S. Section 9-462.06 for more information regarding the circumstances of any stay request. The board shall affix a reasonable time for hearing the appeal, and shall give notice of the hearing by publication in a newspaper of general circulation and by posting such notice pursuant to state law.

The board has the power to administer oaths and take evidence. The hearing is a quasi-judicial hearing, wherein the members act in the capacity as judges as well as fact-finders. The appellant may: 1) present evidence including any and all relevant documentation; 2) call upon witnesses to provide testimony on his or her behalf; 3) cross-examine all city witnesses; and 4) hire an attorney to represent his or her interests at the hearing. The board may reverse, affirm, wholly or partly, or modify the zoning administrator's decision, and make such requirement, decision, or determination as necessary.

To preserve his or her appellate rights, a person aggrieved by a decision of the Board must file within thirty (30) calendar days after the Board's decision, a complaint for special action in the Pinal County Superior Court challenging the Board's decision. This hearing will not be a new trial; rather it will consist of a written decision made by a superior court judge based on the evidence and testimony submitted at the BOA.

If you do retain an attorney, it is highly recommended that such person be licensed in the State of Arizona and be competent in the area of real property law.

The fee to appeal this zoning notice of violation before the BOA is \$250.00 with an additional deposit of \$500.00 due for advertising related expenses.

Respectfully,



Kimberly Wilson, Senior Code Compliance Officer

Attachments:

Exhibit A - Apache Junction Land Development Code; Chapter 1: Zoning Ordinance, Article 1-16: Administration, Section 1-16-13, Development Agreements.

Exhibit B - Development Agreement Non-compliance letter dated November 17, 2016

Exhibit C - Apache Junction Police Department Incident Report, Incident Number 170916007

EXHIBIT A

**[X] AJCC Apache Junction Land Development Code; Chapter 1: Zoning Ordinance, Article 1-16:
Administration, Section 1-16-13, Development Agreements.**

EXHIBIT A

[X] AJCC Apache Junction Land Development Code; Chapter 1: Zoning Ordinance, Article 1-16: Administration, Section 1-16-13, Development Agreements.

§ 1-16-13 DEVELOPMENT AGREEMENTS.

(A) *Intent and purpose.* A development agreement is a contract between a local jurisdiction and a person who has ownership or control of property within the jurisdiction. The purpose of the agreement is to specify the standards and conditions that will govern development of the property. The development agreement provides assurance to the developer that he/she may proceed to develop the project subject to the rules and regulations in effect at the time of approval and that the development will not be subject to subsequent changes in regulations. Development agreements must also benefit the local jurisdiction with sufficient legal consideration. The city may include conditions (mitigation measures) that must be met to assure that a project at a specific location does not have unacceptable impacts on neighboring properties or community infrastructure. The agreement may clarify how the project will be phased, the required timing of public improvements, the developer's contribution toward funding system-wide community improvements, economic incentives and other conditions. The agreement can also facilitate enforcement of requirements, since it is a contract that details the obligations of the developer and city.

(B) *Applicability.* The use of development agreements will be based on a case by case determination by city staff.

(C) *Administrative responsibility.* The city department responsible for administering development agreements will be assigned on a case by case basis. If the development agreement is focused on economic development incentives, the Economic Development Division will be responsible for administering the agreement. If, however, the development agreement is focused on land use, infrastructure and zoning requirements, the Development Services Department's Planning Division will be responsible for administering the agreement.

(D) *Legal review.* In all cases, the City Attorney shall be responsible for legal review and modification of the development agreement prior to City Council consideration.

(E) *City Council approval required.* The City Council has the final authority in approving or denying development agreements. Development agreements shall be presented to the Council for consideration at a public hearing.

AJCC § 1-16-16 VIOLATIONS, PENALTIES AND ENFORCEMENT.

(B) (6) *Criminal filings.* It is unlawful to erect, construct, reconstruct, maintain or use any land in any zoning district in violation of any regulation or any provisions of this Chapter. Any person, firm or corporation violating this Chapter or any part thereof, is guilty of a class one misdemeanor. Each and every day during which the illegal erection, construction, reconstruction, alteration, maintenance or use continues is a separate offense. The City Attorney shall have the sole authority to use his or her discretion in determining whether a criminal action should be filed. The penalty for a class one misdemeanor conviction can be up to 6-months jail time, up to \$2,500 fines or restitution, 3 years probation and other terms the court finds just.

EXHIBIT B

Development Agreement Non-compliance letter dated November 17, 2016



City of Apache Junction
Development Services Department



November 17, 2016

Mr. Mehmood Mohiuddin
c/o Dash In and Mini Mart
2341 N. Apache Trail
Apache Junction, AZ 85119

PERSONALLY DELIVERED,
E-MAILED, AND SENT BY FIRST
CLASS U.S. CERTIFIED MAIL RETURN
RECEIPT REQUESTED

Subject: November 2016 – Development Agreement Non-compliance (Hours of operation of Bull Riding Venue) and City Sign Code Violations - Status

Dear Mr. Mohiuddin: *MO*

Thank you for meeting with me and Senior Planner Rudy Esquivias on Wednesday, November 2, 2016, at the Hitching Post. The purpose of the visit was to follow up on the city's determination that the sign for the RV Storage lot placed in the planter along Highway 88 at the Hitching Post was not permitted because it is considered an off-premise sign. Two monument signs on one street frontage are not permitted on one parcel anywhere in the city as per the city sign code §1-11-7.

During the site visit we discussed this sign and some other possible locations that would comply with the city's sign code. You decided that you would remove the sign faces and place them on the split-rail style fence on the immediate adjacent tax parcel. We concurred that this was a permitted location. I followed up this meeting with an email confirming that the city would not require a sign permit application to simply move the sign faces to the split rail style façade fence. On Thursday, November 10, 2016, I stopped by the Hitching Post and noted that you had already moved the signs to the new location. Thank you for your prompt attention to this particular sign issue.

Also during the meeting, we discussed the allowances for banners and signs covering windows. You stated at some point you would be removing the beer-themed window shade signs on the Pita Pockets building as you felt they were tacky and that you were going to replace them with interior window coverings instead. The city sign code allows up to 75% of window area to be covered with signs and the current beer themed window screens/signs cover more than the permitted amount.

We also discussed banners. I want to reiterate that the sign code only allows two banners per site per business. Since you have two businesses on the site, you are permitted to have a total of four banners: two for the Hitching Post and two for Pita Pockets. You are permitted to use fin flags or banners, however, the city only allows a total of two for each business. You are permitted to have four banners or two fin flags and two banners or four fin flags or any combination as long as the total does not exceed four. Based on my site visit, you are in compliance with a total of three banners. Your continued compliance with all aspects of the city sign code is an ongoing requirement.

Mr. Mahmood Mohiuddin
November 16, 2016
Page 2

Bull Riding Hours of Operation

Recently it has come to my attention that the bull riding activity is operating outside the approved hours that are specified in Paragraph B, § 3, Developer's Obligations, in the Second Amendment to the Economic Development Agreement dated October 1, 2013. A copy of a police CAD report is attached wherein you stated that you are operating the bull riding from 7:30 p.m. to approximately 9:45 p.m. This is a violation of the Development Agreement. You are obligated to confine the hours of operation between 8:00 p.m. and 10:00 p.m. on Thursday and Saturday evenings only, as per the agreement as referenced above.

Parking

During our brief meeting, you indicated that you are considering relocating the parking for the Hitching Post and Pita Pockets from the area within the western town fence façade to the rear of the Hitching Post with the access to this parking area from Lost Dutchman Boulevard. Please be advised that I have consulted with the city attorney and it is the city's position that this would not be permitted under the current site plan of the second amended development agreement. You have the option to present a new site plan to the city, but this would constitute an amendment with a cost of a new application of \$1,675 and council consideration and action.

If you have any questions regarding this letter, please contact me.

Sincerely,



Lawrence J. Kirch, AICP
Director of Development Services/Zoning Administrator
(480) 474-5082 (direct line)

Attachment

EXHIBIT C

Apache Junction Police Department Incident Report, Incident Number 170916007

INCIDENT NUMBER: 170916007		Apache Junction Police Department		ORI # AZ0111300	
INCIDENT REPORT					
ADMINISTRATIVE INFORMATION					
REPORT DATE 09/16/2017 20 25:43		INCIDENT START DATE 09/16/2017 17:16:34		INCIDENT END DATE 09/16/2017 17:16:00	
		ROW SAT		INCIDENT DESCRIPTION City Code Violation	
LOCATION OF INCIDENT 2341 N APACHE TR APACHE JUNCTION AZ 85119				OFFENSE TRACT 03	CASE STATUS 2
EVIDENCE COLLECTED <input type="checkbox"/>	WEATHER	TEMP	LIGHTING	EXCEPTIONAL CLEARANCE N	EXC CL DATE
OFFENSE INFORMATION					
STATUTE CODE		STATUTE DESCRIPTION			TYPE OF WEAPON USED
UNITS ENTERED	FORCED ENTRY <input type="checkbox"/>	COMPUTER USE <input type="checkbox"/>	ALCOHOL USE <input type="checkbox"/>	DRUG USE <input type="checkbox"/>	SECURITY TYPE
		COUNTS	COMPLETED <input type="checkbox"/>	P/M	
LOCATION TYPE		BIAS MOTIVATION		CRIMINAL ACTIVITY	
STATUTE CODE		STATUTE DESCRIPTION			TYPE OF WEAPON USED
UNITS ENTERED	FORCED ENTRY <input type="checkbox"/>	COMPUTER USE <input type="checkbox"/>	ALCOHOL USE <input type="checkbox"/>	DRUG USE <input type="checkbox"/>	SECURITY TYPE
		COUNTS	COMPLETED <input type="checkbox"/>	P/M	
LOCATION TYPE		BIAS MOTIVATION		CRIMINAL ACTIVITY	
VICTIM INFORMATION					
VIC # 1	SAME AS COMPLAINANT <input checked="" type="checkbox"/>	NAME (LAST, FIRST MIDDLE) Wainford Bill		HOME #	CELL #
				WORK #	
ADDRESS 2055 N Cortez Rd Apache Junction AZ 85119-					
DOB	AGE 00	TO AGE	SEX M	RACE W	ETHNICITY N
EYE COLOR		HAIR COLOR	SSN	OLN #	OLN STATE
SCARS/SCARS/TATTOOS					
EMPLOYER/SCHOOL		OCCUPATION		ADDRESS	
TYPE OF VICTIM		AGGRAVATED ASSAULT CIRCUM		JUST HOM CIRCUM	STATEMENT <input type="checkbox"/>
				DOMESTIC <input type="checkbox"/>	
COMPLAINANT INFORMATION					
NAME (LAST, FIRST MIDDLE)		HOME #		CELL #	WORK #
				STATEMENT <input type="checkbox"/>	
ADDRESS					
DOB	AGE	SEX	RACE	ETHNICITY	RESIDENT STATUS
		OLN #	OLN STATE		
REPORTING OFFICER					
REPORTING OFFICER GRIFFITH JUSTIN 187		REVIEWING OFFICER ROLLINS BILL 146		APPROVING OFFICER ROLLINS BILL 146	

INCIDENT NUMBER: 170918007		Apache Junction Police Department			ORI # AZ0111300	
INCIDENT REPORT SUSPECTS INFORMATION						
SUSPECT # 1	NAME (LAST, FIRST MIDDLE) Mehmood, Mohluddin				DOB 12/25/1960	AGE 56
ADDRESS 2304 N Cortez Rd Apache Junction AZ 85119-					DLN #	DLN STATE
HOME #	CELL #	WORK #	SSN 134-76-1604	ETHNICITY N	SEX M	RACE U
WEIGHT 200	HAIR COLOR BROWN	HAIR STYLE	HAIR LENGTH	EYE COLOR BROWN	GLASSES F	BUILD 2
SCARS, MARKS, TATTOOS			FACIAL HAIR		TEETH	
CLOTHING						
DOMINANT HAND		RESIDENTIAL STATUS RESIDENT			WEAPON TYPE	
OFFENSES INVOLVED 1-12						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
[REDACTED]						
SUSPECT #	NAME (LAST, FIRST MIDDLE)				DOB	AGE
ADDRESS					DLN #	DLN STATE
HOME #	CELL #	WORK #	SSN	ETHNICITY	SEX	RACE
WEIGHT	HAIR COLOR	HAIR STYLE	HAIR LENGTH	EYE COLOR	GLASSES F	BUILD
SCARS, MARKS, TATTOOS			FACIAL HAIR		TEETH	
CLOTHING						
DOMINANT HAND		RESIDENTIAL STATUS			WEAPON TYPE	
OFFENSES INVOLVED 1-12						
1	2	3	4	5	6	7
8	9	10	11	12	13	14

INCIDENT NUMBER: 170916007	Apache Junction Police Department	ORI # AZ0111300
INCIDENT REPORT NARRATIVE		

NARRATIVE TITLE: NARRATIVE	1 (000000)
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NARRATIVE:

On 09/16/17 I was dispatched to 2341 N Apache Trail at 1700 hours at the Hitching Post. Upon arrival I contacted Mohiuddin "Ali" Mehmood and asked if they had any bull riding going on. Ali stated that he had the Junior Bull Riders Association there for the 10 and under kids competing to go to Las Vegas. He advised that it wasn't making any noise and that they were finishing up now. He stated that it was a one time charity event and the kids were there to compete before heading to Las Vegas. I advised him that there was a complaint made in reference to the City Code agreement reference no bull riding events until 2000 hours. He understood and advised it was for kids and that it was a one time event. He stated again that they were finishing up now.

I left the Hitching Post and went to speak with the reporting party Bill Wallingford. Bill stated and showed a typed agreement in reference to their agreement about no bull riding until 2000 hours. I advised him that I was aware of the agreement and that a report would be filed in reference to his complaint. Bill requested that the report be sent to Code Compliance.

Case Status Closed Report Taken