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Transaction # 2011-03453

Christine Rhoads FEB 10 2011
Cochise County Recorder

ORDINANCE 041-11

**COCHISE COUNTY
HAZARD ABATEMENT ORDINANCE**

Pursuant to Authority of A.R.S. § 11-268, the Cochise County Board of Supervisors is compelled to enact an ordinance intended to provide for the abatement of rubbish, trash, weeds, filth, debris or dilapidated buildings which constitute a hazard to the public health and safety from buildings, grounds, lots, contiguous sidewalks, streets and alleys in the unincorporated areas of Cochise County.

The primary intent of this Ordinance is to provide a just, equitable and practicable method to remedy and abate a hazard to a person or property. Hazard is primarily defined as accumulations or conditions which have a strong potential for causing or carrying a fire, cause injury to a person, cause hazard to the health of any person as result of damaged and dilapidated buildings which are unoccupied, unsecured, open and accessible and have the potential of harboring illegal activities. This Ordinance is not intended to be a neighborhood beautification and aesthetic control measure or to address the lack of maintenance of buildings and/or structures.

Generally, the investigation of a hazard is a result of a complaint, or by observation of a condition that appears to be sufficiently dangerous to warrant an inspection by the Hazard Abatement Officer. It is not intended for the Hazard Abatement Officer to travel all over the county searching for hazardous conditions.

The Cochise County Planning Director is both the County Zoning Inspector and the Hazard Abatement Officer, and together with all County agencies shall enforce the provisions of these regulations.

The provisions of this Ordinance shall apply to all hazardous conditions as herein defined, which are now in existence, or which may hereafter become dangerous in this jurisdiction.

[Note: Where a provision is required or authorized by statute, the relevant statute section number is indicated in brackets.]

PART I: DEFINITIONS

As used herein, bold-faced terms shall have the following meaning:

1. **“Board”** means the Cochise County Board of Supervisors.
2. **“Building”** means any real property structure, movable or immovable, permanent or temporary, vacant or occupied, used (or of a type customarily used) for human lodging or business purposes, or where livestock, produce, or personal or business property is located, stored or used.
3. **“Contiguous Sidewalks, Streets and Alleys”** means any sidewalk, street, or alley, public or private, adjacent to the edge or boundary, or touching on the edge or boundary, of any real property.
4. **“County”** means the unincorporated areas of Cochise County.
5. **“Days”** means calendar days unless otherwise noted.
6. **“Dilapidated Building”** means any real property structure that is in such disrepair or is damaged to the extent that its strength or stability is substantially less than a new building or it is likely to burn or collapse and its condition endangers the life, health, safety, or property of the public. [A.R.S. § 11-268.J]
7. **“Grounds”** means any private or public land, vacant or improved.
8. **“Hazard Abatement Officer”** means the County Zoning Inspector or duly authorized representative to discharge the duties of the County pursuant to this ordinance unless otherwise expressly provided herein.
9. **“Lessee”** means a person who has the right to possess real property pursuant to a lease, rental agreement, or similar instrument.
10. **“Lots”** means any plot or quantity of land, vacant or improved, private or public, as surveyed, platted or apportioned for sale or any other purpose.
11. **“Occupant”** means a person who has the actual use, possession or control of real property. The term does not include any corporation or association operating or maintaining right-of-way for and on behalf of the United States government, either under contract or federal law. [A.R.S. § 11-268.I]
12. **“Owner”** means a person who is a record owner of real property as shown in the public records in the office of the Cochise County Recorder, and includes a person holding

equitable title under a recorded installment sales contract, contract for deed or similar instrument.

13. **“Person”** means an individual, partnership, corporation, association, trust, state, municipality, political subdivision, or any other entity that is legally capable of owning, leasing, or otherwise possessing real property.
14. **“Public nuisance”** means a dilapidated building or an accumulation of rubbish, trash, weeds, filth or debris that constitutes a hazard to the public health and safety as determined by the Hazard Abatement Officer.
15. **“Real Property”** means buildings, grounds, or lots, as well as contiguous sidewalks, streets, and alleys, located in the County.

PART II: VIOLATION OF ORDINANCE; REMOVAL OF PUBLIC NUISANCE BY OWNER, LESSEE OR OCCUPANT; SERVICE OF NOTICE TO ABATE; REMOVAL BY COUNTY; ASSESSMENT OF COSTS; RECORDATION AND PRIORITY OF LIEN.

- A. **Violation.** A person, firm or corporation shall have created a public nuisance and committed a violation of this ordinance if such person, firm or corporation without lawful authority, and in a manner that constitutes a hazard to public health and safety:
 1. Places, permits, or provides for rubbish, trash, weeds, filth, debris or dilapidated buildings to remain upon property located in the County of which they are owner, lessee, or occupant. [A.R.S. § 11-268.A]
 2. Places, permits, or provides for rubbish, trash, weeds, filth, debris or dilapidated buildings to remain upon contiguous sidewalks, streets and alleys in the County which are dedicated and open to the public. [A.R.S. § 11-268.A]
 3. Places, permits, or provides for rubbish, trash, weeds, filth, debris or dilapidated buildings to remain upon any other private or public property in the County not owned or under the control of the person, firm or corporation. [A.R.S. § 11-268.A.3]
- B. **Duty to remove.** A person, firm or corporation shall remove or otherwise abate a public nuisance as defined herein in thirty (30) days after mailing or personal service of a Notice and Order to Abate as provided herein. [A.R.S. § 11-268.A.1]
- C. **Notice and Order to Abate.** Upon finding probable cause that a violation of this ordinance has occurred, the Hazard Abatement Officer shall issue a notice in writing which shall be served in person or by certified mail upon the owner, any lienholder, occupant or lessee at their last known address or at the address on file in the County Treasurer’s Office to which the most recent tax bill was mailed. If the owner does not reside on the property, a copy of the notice shall be served upon the owner in person or by certified mail to the owner’s last known address. Failure by any party to receive the

notice shall not be a bar to abatement, assessment of costs or lien of assessment pursuant to this Ordinance. [A.R.S. § 11-268.A.1]

D. Notice and Order. The Notice and Order to Abate shall include the following:

1. The street address, parcel number and a legal description sufficient for identification of the premises on which the alleged violation occurred.
2. A statement that the Hazard Abatement Officer has determined that there is a probable cause that a violation of this ordinance has occurred on the premises identified in the notice.
3. An order that the owner, occupant or lessee shall have thirty (30) days from the date of mailing or personal service of the order to remove any rubbish, trash, weeds, filth, debris or dilapidated buildings upon the property or upon contiguous sidewalks, streets or alleys.
4. A statement that rubbish, trash, weeds, filth, debris or dilapidated building materials constituting a public nuisance must be disposed of at an appropriate waste collection facility or by other legal means and that an affidavit attesting to the fact that said material was disposed of in a legal manner is to be submitted to the Hazard Abatement Officer prior to a determination of compliance with the Notice and Order to Abate.
5. A statement that the County may cause the violation to be abated if the owner, occupant or lessee fails to comply with the order within the specified compliance period.
6. An estimate of the cost of removal or abatement by the County, including incidental costs, to be based on an estimate provided by a qualified contractor or by the Hazard Abatement Officer. [A.R.S. § 11-268.A.1]
7. A statement that the owner, occupant or lessee shall have thirty (30) days from the post mark date of mailing or personal service of the Notice and Order to Abate to appeal the issuance of the notice to the Board of Supervisors and that failure to appeal will constitute waiver of all rights to an administrative hearing and determination of the matter.
8. A statement that a party who places any rubbish, trash, filth or debris upon any private or public property located in the unincorporated area of the county that is not owned or controlled by that party without authorized permission is guilty of a Class 1 misdemeanor and may be subject to criminal penalties in addition to the cost of abatement. [A.R.S. § 11-268.A.3]

E. Appeal of Notice and Order to Abate. Any person receiving a Notice and Order to Abate may appeal to the Board of Supervisors as follows[A.R.S. § 11-268.A.2]:

1. **Notice of Appeal.** A written Notice of Appeal shall be filed with the Clerk of the Board within thirty (30) days after the Notice and Order to Abate was mailed or personally served. The date of receipt by the Board shall be the date of filing.
 2. **Contents of Notice of Appeal.** The Notice of Appeal shall state in reasonable detail why the appellants should not be required to comply with the Notice and Order to Abate.
 3. **Hearing on Appeal.** Upon receipt of the Notice of Appeal, the Board shall, within a reasonable time, place the matter on the agenda at a regular meeting or, if the Board has appointed a hearing officer pursuant to Paragraph II.P, refer the appeal to the hearing officer. The Hazard Abatement Officer shall appear and present evidence of the existence of the Public Nuisance. The appellant may present evidence controverting the existence of the Public Nuisance. The hearing shall be informal and without regard to the rules of procedure or evidence governing court proceedings. The Board shall decide the appeal. Nothing in this Ordinance in any way impairs any right the appellant may have to challenge the Board's decision in Superior Court. [A.R.S. § 12-2001]
 4. **Extension of Time for Compliance.** If the Board's decision is adverse to the appellant, the date of compliance set forth in the Notice and Order to Abate shall be extended until thirty (30) days from the date of the Board's decision.
- F. Removal by Board.** If the owner, lessee or occupant fails to remove or otherwise abate the Public Nuisance in thirty (30) days of mailing or personal service of the Notice and Order to Abate (or such extension thereof as may be granted in writing by the Board), the Board or its designee may, at the expense of the owner, lessee or occupant, order removal or abatement of the Public Nuisance or cause it to be removed or abated. [A.R.S. § 11-268.B]
1. **Cost of Removal.** The costs assessed for removal or abatement shall not exceed the actual costs and incidental expenses thereof. If the removal or abatement is to be performed by an outside contractor, in retaining a contractor the Hazard Abatement Officer shall comply with the County Procurement policy. In the alternative, removal or abatement may be performed by a State Prison work crew or Cochise County personnel if it is determined by the Hazard Abatement Officer to be feasible, in which case costs will be the actual costs to the County including the time of County personnel assessed at applicable rates. [A.R.S. § 11-268.C]
 2. **Historical Review.** Before the removal of a dilapidated building, the Board shall consult with the state historic preservation officer to determine if the building may be of historical value. [A.R.S. § 11-268.G]

3. **Removal from Tax Rolls.** Upon the removal of a dilapidated building, the County Assessor shall adjust the valuation of the Real Property on the property assessment tax roll from the date of removal. [A.R.S. § 11-268.H]

G. Assessment. Upon the removal or abatement of Public Nuisance as provided in Paragraph II.F, the actual cost of removal or abatement, together with the actual cost of any additional inspections and other incidental costs, shall be an assessment against the Real Property on which the Public Nuisance was located. [A.R.S. § 11-268.C]

H. Notice of Assessment. A written Notice of Assessment shall be served in the same manner as the Notice and Order to Abate. The Notice of Assessment shall list the common address, legal description and tax parcel number of the property. The Notice of Assessment shall set forth the facts supporting it as well as an itemized listing of the actual cost of removal or abatement, the actual costs of any additional inspections and other incidental costs. The Notice shall state that the entire cost is due and payable in full not later than thirty (30) days from the date of issuance of the Notice and that the assessment will become delinquent as of that date. The Notice shall be signed by the Hazard Abatement Officer. The Notice shall also contain the following statement in bold face print:

NOTICE: THIS NOTICE OF ASSESSMENT PURSUANT TO A.R.S. § 11-268 SHALL CONSTITUTE A LIEN UPON THE PROPERTY DESCRIBED IN THE NOTICE IN FAVOR OF COCHISE COUNTY. THE COUNTY MAY FORECLOSE THE LIEN AND SELL THE PROPERTY DESCRIBED TO RECOVER THE COSTS STATED IN THE NOTICE OF ASSESSMENT.

The Notice of Assessment shall indicate that the owner, lessee or occupant shall have thirty (30) days from the post marked date of the mailing or personal service of the Notice of Assessment to appeal the amount of the assessment imposed by the County.

I. Appeal of Notice of Assessment. All appeals of assessments shall be in writing and shall specify the grounds for appeal of the assessment. The date of receipt of the Notice of Appeal by the Board shall be the date of filing. No appeals of violations shall be heard upon appeal of an assessment. [A.R.S. § 11-268.A.2]

J. Report of Assessment. If an appeal of the Notice of Assessment is not timely filed, the Hazard Abatement Officer shall prepare a Report of Assessment for review by the Board of Supervisors. The Report shall list the common address, legal description and tax parcel of the property. The Report of Assessment shall set forth the facts supporting it as well as an itemized listing of the actual cost of removal or abatement, the actual cost of any additional inspections and other incidental costs. Upon receipt of the Report by the Board, the Chairman shall sign it, with authority to do so hereby delegated by the Board to the Chairman. Board approval of the Report is not required. Thereafter, upon recordation pursuant to Paragraph II.L, the assessment shall become a lien against the property.

- K. Hearing on Appeal.** Upon receipt of the Notice of Appeal of Assessment, the Board shall, within a reasonable time, place the matter on the agenda at a regular meeting or, if the Board has appointed a hearing officer pursuant to Paragraph II.P of this ordinance, refer the appeal to the hearing officer. Written notice of the hearing shall be provided to the Hazard Abatement Officer, to other appropriate County departments and to the Appellant. The Hazard Abatement Officer shall appear and present the facts supporting the assessment as well as an itemized listing of the actual cost of removal or abatement, the costs of any additional inspections and other incidental costs. The Appellant may present evidence controverting the imposition of the assessment. The Board shall determine whether the assessment was made in accordance with the provisions of this ordinance and applicable state statutes, and whether the amount of the assessment is sufficient to cover the actual costs of abatement and related activities. After hearing all of the evidence presented, or after reviewing recommendations made by its hearing officer, the Board shall issue its findings in writing upholding or modifying the amount of the assessment. The decision of the Board of Supervisors shall be final.
- L. Recordation.** If the owner, lessee or occupant fails to pay the assessment within thirty (30) days after receipt of the Notice of Assessment (or any extension as may have been granted in writing by the County Zoning Inspector or his designee), and fails to timely appeal the assessment, that assessment shall be delinquent and shall be recorded in the office of the Cochise County Recorder, upon the Board Chairman signing a Report of Assessment pursuant to Paragraph II.J. If a Notice of Assessment is appealed to the Board and the assessment is sustained in whole or in part in a written decision by the Board, and the owner, lessee or occupant fails to pay the amount of the assessment ordered by the Board within thirty (30) days after receipt of the Board's decision, the assessment shall be delinquent and shall be recorded in the office of the Cochise County Recorder. [A.R.S. § 11-268.D]
- M. Lien of Assessment.** The assessment shall be a lien against the real property from and after the date of recordation and shall accrue interest at the statutory judgment rate until paid. The lien of assessment shall be subject to and inferior to all prior recorded mortgages and encumbrances and to such other liens as specifically provided by law. [A.R.S. § 11-268.D]
- N. Foreclosure.** The Board may, but shall not be obligated to, bring an action to enforce the assessment lien in the Cochise County Superior Court at any time after the recordation of the assessment. The recorded assessment is prima facie evidence of the truth of all matters recited therein and of the regularity of all proceedings before the recordation thereof.
- O. Subsequent Assessments.** A prior assessment shall not constitute a bar to a subsequent assessment or assessments for such purposes and any number of liens may be recorded and may be enforced in the same or separate actions by the County. [A.R.S. § 11-268.F]
- P. Hearing Officer; Appointment and Duties.** In fulfilling the responsibilities required of the Board of Supervisors pursuant to this ordinance, the Board may, by a majority vote of

its members, appoint a hearing officer to review appeals of Notices to Abate and/or Notices of Assessment. The hearing officer shall hold hearings and take testimony, make findings and prepare recommendations to be reported for action by the Board of Supervisors.

Q. Assessment schedule. Assessments that are imposed pursuant to this ordinance run against the property until they are paid, and are due and payable in equal annual installments as follows [A.R.S. § 11-268.E]:

1. Assessments of less than five hundred dollars (\$500.00) shall be paid within one year after the assessment is recorded;
2. Assessments of five hundred dollars (\$500.00) or more but less than one thousand dollars (\$1,000.00) shall be paid within two years after the assessment is recorded;
3. Assessments of one thousand dollars (\$1,000.00) or more but less than five thousand dollars (\$5,000.00) shall be paid within three years after the assessment is recorded;
4. Assessments of five thousand dollars (\$5,000.00) or more but less than ten thousand dollars (\$10,000.00) shall be paid within six years after the assessment is recorded;
5. Assessments of ten thousand dollars (\$10,000.00) or more shall be paid within ten years after the assessment is recorded.

PART III: ADDITIONAL PENALTIES

A. Classification; Liability. In addition to the penalties imposed pursuant to the abatement and assessment provisions of this ordinance, any person, firm or corporation placing any rubbish, trash, filth or debris upon any private or public property located in the unincorporated areas of the county not owned or under the control of the person, firm or corporation shall be guilty of a Class 1 misdemeanor and, in addition to any fine which may be imposed for a violation of any provision of this ordinance, shall be liable for all costs which may be assessed pursuant to this ordinance for the removal of the rubbish, trash, filth or debris. [A.R.S. § 11-268.A.3]

PART IV: NON-EXCLUSIVE REMEDY

The remedies provided for in this ordinance shall be in addition to any and all other remedies, civil or criminal, available to Cochise County pursuant to statute and common law, specifically including those set forth in A.R.S. §§ 13-2908, 36-602 and 49-143.

PASSED AND ADOPTED THIS 8th **DAY OF** February, 2011.



Patrick G. Call, Chairman
Cochise County Board of Supervisors

ATTEST:



Katie A. Howard
Clerk of the Board

APPROVED AS TO FORM:



Britt Hanson
Chief Civil Deputy County Attorney