GILA COUNTY ORDINANCE 08-02

CLEAN AND LIEN
Adopted November 17, 2008

GILA COUNTY CLEAN AND LIEN ORDINANCE # 08-02

AN ORDINANCE ADOPTED PURSUANT TO A.R.S. §11-268, REQUIRING AN OWNER, LESSEE OR OCCUPANT OF BUILDINGS, GROUNDS OR LOTS LOCATED IN THE UNINCORPORATED AREAS OF THE COUNTY TO REMOVE RUBBISH, TRASH, WEEDS, FILTH, DEBRIS, OR DILAPIDATED BUILDINGS WHICH CONSTITUTE A HAZARD TO PUBLIC HEALTH AND SAFETY FROM BUILDINGS, GROUNDS, LOTS, CONTIGUOUS SIDEWALKS, STREETS AND ALLEYS; PRESCRIBING THE PROCEDURE FOR NOTICE AND APPEAL; PROVIDING FOR THE REMOVAL THEREOF BY THE COUNTY AND THE ASSESSMENT OF THE COST THEREOF AS A LIEN AGAINST THE PROPERTY IN THE EVENT OF NON-COMPLIANCE; AND PRESCRIBING A PENALTY FOR THE PLACEMENT OF SUCH MATERIALS ON THE PROPERTY OF ANOTHER.

PART I: DEFINITIONS

As used herein, capitalized terms shall have the following meaning:

1.1 BOARD means the Gila County Board of Supervisors.

1.2 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.

1.3 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.

1.4 COUNTY means Gila County or any of its agencies or departments.

1.5 COUNTY OFFICER means a County Zoning Inspector, Code Enforcement Officer, Gila County Community Development Director or the Building Official.

1.6 CODE COMPLIANCE SUPERVISOR means the Code Compliance Supervisor or his/her designate.

1.7 DILAPIDATED BUILDING means any structure on real property that is in such disrepair, or is damaged to the extent, that its strength or stability is substantially less than a new building or that is likely to burn or collapse, and its condition endangers the life, health, safety, or property of the public.

1.8 HAZARD TO PUBLIC HEALTH AND SAFETY means:

1. **a dilapidated building or**
2. **an accumulation of rubbish, trash, weeds, filth or debris maintained in such a manner that it creates a substantial risk of causing sickness or disease or**
3. **an accumulation of rubbish, trash, weeds, filth or debris maintained in such a manner that it constitutes a serious fire hazard**

1.9 HEARING OFFICER means an individual appointed by the Board of Supervisors to hear and adjudicate alleged violations of the referenced Gila County Development Codes.

1.10 LESSEE means a person who has the right to possess real property pursuant to a lease, rental agreement, or similar instrument.

1.11 LOT means any plot or quantity of land, vacant or improved, private or public, as surveyed, platted or apportioned for sale or any other purpose.

1.12 OCCUPANT means a person who has the actual use, possession, or control of real property. This term does not include any firm, corporation or association operating or maintaining right-of-way for and on behalf of the United States government, either under contract or federal law.

1.13 OWNER means a person who is a record owner of real property as shown in the public records in the office of the Gila County Assessor's, and includes a person holding equitable title under a recorded installments sales contract, contract for deed or similar instrument.

1.14 PERSON means an individual, partnership, firm, corporation, association, trust, state, municipality, political subdivision, or any other entity that is legally capable of owning, leasing, or otherwise possessing real property.

1.15 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 HAZARD TO PUBLIC HEALTH AND SAFETY 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 shall have created a hazard to Public Health and Safety and committed a violation of this ordinance if such person, without lawful authority, in any unincorporated area of the county:

1. Places, permits or provides for a dilapidated building to remain upon property of which they are owner, lessee or occupant or upon any other private or public property not owned or under the control of such person.

2. Places, permits or provides for an accumulation of rubbish, trash, weeds, filth, debris maintained in such a manner that it creates a substantial risk of causing sickness or disease to remain upon property of which they are owner, lessee or occupant or upon any other private or public property not owned or under the control of such person.

3. Places, permits or provides for an accumulation of rubbish, trash, weeds, filth, debris maintained in such a manner that it constitutes a serious fire hazard to remain upon property of which they are owner, lessee or occupant or upon

any other private or public property not owned or under the control of such person.

B. **Duty to Remove.** A person shall remove or otherwise abate a hazard to Public Health and Safety as defined herein within 30 calendar days after receiving service of a Notice of Violation from the Code Compliance Officer.

C. NOTICE OF VIOLATION.

1. Upon reasonable belief that a violation of this ordinance has occurred, the Code Enforcement Officer shall issue a Notice of Violation in writing which shall be served in person or by certified mail upon the owner, 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.

2. If 30 days after service of the Notice of Violation the hazard to Public Health and Safety has not been removed, the Code Enforcement Officer may issue a Complaint and Notice of Hearing pursuant to Rules 4 and 5 of the Gila County Hearing Officer Rules of Procedure, which shall be served pursuant to Rule 3 of the Gila County Hearing Officer Rules of Procedure upon the person believed to be in violation of this Ordinance.

3. The Gila County Hearing Officer Rules of Procedure shall be the Procedural Rules that the Hearing Officer shall follow to conduct the hearing.

4. If, at the hearing or any subsequent review hearing, the Hearing Officer finds that a person has failed to remove or otherwise abate a hazard to Public Health and Safety pursuant to this Ordinance, he may issue a written Order to Abate.

D. ORDER TO ABATE.

The ORDER to abate shall contain the following:

1. The street address, parcel number and/or the legal description sufficient for identification of the property on which the violation occurred.

2. A statement indicating that there is reasonable belief a violation has occurred.

3. A statement that all items causing the violation shall be removed from the property and legally disposed of by a certain date, not less than 30 days from the date of the notice.

4. A statement that Gila County may cause the violation to be removed or abated if not removed or abated by a certain date.

5. A statement that rubbish, trash, weeds, filth, debris or building materials must be disposed of at an approved waste collection facility or by other legal means, and that a tipping fee receipt or other evidence of legal disposal is to be submitted to the County Officer prior to a determination of a compliance with the Notice to Abate.

6. A statement acquired by the Code Enforcement Officer containing an estimate of costs, fees and penalties, including incidental costs and the costs of additional inspections, to be incurred by Gila County should the responsible party not remove or abate the violation by a certain date.

7. A statement that all costs, fees and penalties incurred by Gila County shall be assessed against the responsible party, that this assessment shall be recorded as a lien against the property, and that the assessment may also be collected by a collection agency. The collection agency may add another twenty-five percent (25%) to the total amount of the civil penalties which retains it's compensation for its services.

8. A statement that an appeal to the Gila County Board of Supervisors of an Order to Abate must be filed in writing within 15 days after the Order is signed by the Hearing Officer. Failure to file an appeal according to the appeal procedures in the Gila County Hearing Officer Rules of Procedure shall be a waiver of the right to appeal to the Board of Supervisors.

9. A statement that any person that places 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 is guilty of a class 1 misdemeanor and may be subject to criminal penalties in addition to the costs of abatement.

E. Appeal an Order to Abate.

Person receiving an Order to Abate may appeal to the Board of Supervisors as follows:

1. A written Notice of Appeal shall be filed with the Code Compliance Supervisor within 15 days after the Order to Abate was mailed or personally served. The date of receipt by the Code Compliance Supervisor 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 Order to Abate. The Notice of Appeal and information related to the Order to Abate will be forwarded to the Planning & Zoning Commission for review and recommendation. The Commission will forward their recommendation to the Clerk of the Board for consideration by the Board of Supervisors.

3. Hearing on Appeal. Upon receipt of the Notice of Appeal and the Planning & Zoning Commission recommendation, the Clerk of the Board shall set a date, time and place. The County Officer shall appear and present evidence of the existence of the hazard to Public Health and Safety. The appellant may present evidence controverting the existence of the hazard to Public Health and Safety. The hearing shall be informal and without regard to the rules of procedure or evidence governing court proceedings. The Board shall decide the appeal, and its decision shall be final.

4. Extension of Time for Compliance. If the Board's decision is adverse to the appellant, the date for compliance set forth in the Order to Abate shall be extended by 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 hazard to Public Health and Safety within 30 calendar days of mailing and or personal service of the Order to Abate (or such extension thereof as may be granted in writing by the Board), the Board may, at the expense of the owner, lessee or occupant, remove or abate the hazard to Public Health and Safety or cause it to be removed or abated; provided, however, that if such removal or abatement is not undertaken within 180 days after the right to do so accrues, a new Notice of Violation shall be served as provided in Paragraph II (C).

1. Cost of Removal. The costs assessed for removal or abatement shall not exceed the actual costs and incidental expenses thereof.

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.

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.

G. Assessment. Upon the removal or abatement of hazard to Public Health and Safety, the actual cost of removal or abatement, together with the actual costs of any additional inspections and other incidental costs, shall be an Assessment against the Real Property on which the hazard to Public Health and Safety was located.

H. Notice of Assessment. A written Notice of Assessment shall be served in the same manner as the Order to Abate.

The Notice of Assessment shall contain:

1. The street address (if one exists), parcel number and/or a legal description sufficient for identification of the property on which the violation occurred.

2. A statement of what the violation was.

3. A statement that the items causing the violation were removed from the property according to the Order to Abate.

4. A statement of the actual costs, fees and penalties, including incidental costs and the costs of additional inspections, incurred by Gila County to remove or abate the violation.

5. The Notice shall state that entire cost is due and payable in full no later than 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 Code Enforcement 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 GILA COUNTY. THE COUNTY MAY TAKE LEGAL ACTION TO FORECLOSE THE LIEN AND SELL THE PROPERTY DESCRIBED TO RECOVER THE COSTS STATED IN THE NOTICE OF ASSESSMENT.

6. A statement that all costs, fees and penalties incurred by Gila county shall be assessed against the responsible party, that this assessment shall be recorded as a lien against the property, and that the assessment may also be collected by a collection agency;

7. A statement that an appeal to the Gila County Board of Supervisors of a Notice of Assessment must be filed in writing to the Code Compliance Supervisor within 15 days after the service of the Notice. Failure to file an appeal according to the appeal procedures in the Gila County Hearing Officer Rules of Procedure shall be a waiver of the right to appeal to the Board of Supervisors.

I. Report of Assessment.

If an appeal of the Notice of Assessment is not filed in a timely manner, the Code Enforcement Officer shall prepare a Report of Assessment for consideration by the Board of Supervisors and shall contain:

1. The street address, parcel number and/or a legal description sufficient for identification of the property on which the violation occurred;

2. A statement of what the violation is; and

3. An itemized listing of the actual costs of removal or abatement of the violation, the actual costs of additional inspections and other incidental costs. Upon acceptance of the Report, the Chairman of the Board shall sign it.

J. 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 Notice of Assessment.

K. Hearing on Appeal.

Upon receipt of the Notice of Appeal, the Clerk of the Board shall set date for review and mail the parties a written notice of time and place of the Appellate review.

1. The Code Enforcement Staff 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.

2. The Board shall determine whether the assessment was made in accordance with the applicable ordinance or resolution and whether the amount of the assessment is sufficient to cover the actual costs of abatement and related activities.

3. The Board shall issue its findings in writing upholding or modifying the amount of the assessment.

4. Written notice of the final decision of the Board shall be hand delivered or mailed by first class mail to all parties by the Clerk of the Board within fifteen (15) calendar days of the Board's decision.

5. Appeal to the Superior Court. Judicial review of the final decision of the Board shall be pursuant to Arizona Revised Statutes, Title 12, Chapter 7, Article 6 (12-901 et seq.)

L. Recordation.

If the owner, lessee, or occupant fails to pay the assessment within 30 calendar days after receipt of the Notice of Assessment (or any extension as may be granted in writing by the County) the assessment shall be delinquent and may be recorded in the office of the Gila County Recorder.

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 the assessment shall be subject and inferior to all prior recorded mortgages and encumbrances, and to such other liens as specifically provided by law.

N. Foreclosure.

The Board may, but shall not be obligated to, bring an action to enforce the assessment lien in the Gila 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. Imposed assessments run against the property until they are paid and are due and payable to the Community Development Division in equal annual installments as follows:

1. Assessments of less than five hundred dollars ($500) shall be paid within one (1) year after the assessment is recorded.

2. Assessment of five hundred dollars ($500) or more but less than one thousand dollars ($1,000) shall be paid within two (2) years after the assessment is recorded.

3. Assessments of one thousand dollars ($1,000) or more but less than five thousand dollars ($5,000) shall be paid within three (3) years after the assessment is recorded.

4. Assessments of five thousand dollars ($5,000) or more but less than ten thousand dollars ($10,000) shall be paid within six (6) years after the assessment is recorded.

5. Assessments of ten thousand dollars ($10,000) or more shall be paid within ten (10) years after the assessment is recorded.

P. Subsequent Assessments.

A prior assessment shall not constitute a bar to a subsequent assessment or assessments for such purposes and any number of liens on the same lot or tract of land and any or all liens may be recorded and may be enforced in the same or separate actions by the County.

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, filth or debris.

B. Fine. Upon conviction of a violation of Part III (A) of this Ordinance, the court shall impose a fine of not less then One Hundred ($100.00) Dollars.

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 Gila County pursuant to statute or common law, specifically including those set forth in A.R.S. §13-2908-36-602, and 49-143.

Passed and Adopted this 17th **day of** November**, 2008.**

Gila County Board of Supervisors

By: _____
Jose M. Sanchez, Chairman

Approved as to form:

_____
County Attorney

ATTEST:

_____
Steven L. Besich, Clerk of the Board