

ARTICLE 16 ENFORCEMENT

Code Enforcement



SECTION 16-10

ESTABLISHMENT OF POSITION OF COUNTY ZONING INSPECTOR

- A. For the purpose of the enforcement of this Ordinance within the zoned area of Gila County, the position of County Zoning Inspector is hereby established.
 1. The Director of the Gila County Community Development Office is hereby designated County Zoning Inspector.
 2. The Board of Supervisors may also designate such Deputy Zoning Inspectors as it deems necessary for the proper administration and enforcement of this Ordinance.
- B. From and after the establishment and filling of this position, it shall be unlawful to erect, construct, reconstruct, alter or use any building or other structure within a zoning district covered by this Ordinance without first obtaining a building permit. Inspectors shall recognize the limitations placed on their authority and the exceptions to zoning and permitting regulations imposed by Arizona Revised Statutes Chapter 6, Article 2, § 11-808.

SECTION 16-11

VIOLATIONS

- A. It is unlawful to erect, construct, reconstruct, alter, maintain, or use any structure or land in violation of any provision of this Ordinance, and any such violation constitutes a public nuisance.
 1. Criminal Penalties

Any person, firm or corporation, whether as principal, owner, agent, tenant, employee or otherwise, who violates any provision of this ordinance or violates or fails to comply with any order or regulation made hereunder is guilty of a Class 2 Misdemeanor pursuant to A.R.S. § 11-808. Each and every day during which the illegal activity, use or violation continues is a separate offense.

2. Civil Penalties

Any person, firm or corporation, whether as principal, owner, agent, tenant, employee or otherwise, who violates any provisions of this ordinance **shall** be subject to a civil penalty. Each day of a continuing violation is a separate violation for the purpose of imposing a separate penalty. The civil penalty for violations of this ordinance shall be established by separate resolution of the Board of Supervisors, but shall not exceed the amount of the maximum fine for a Class 2 Misdemeanor. An alleged violator shall be entitled to an administrative hearing on his liability, and review by the Board of Supervisors as provided in A.R.S. §11-808. Pursuant to that Section 16-11.A. The Board of Supervisors shall adopt written Rules of Procedures for such hearing and reviews.

3. Remedies

An alleged violator who is served with Notice of Violation subject to civil penalty shall not be subject to a criminal prosecution for the same factual situation. However, all other remedies provided for herein shall be cumulative and not exclusive. The conviction and punishment of any person hereunder shall not relieve such person from the responsibility to correct prohibited conditions or improvements nor prevent the enforcement, correction or removal thereof. In addition to the other remedies provided in this article, the Board of Supervisors, the County Attorney, the Inspector, or any adjacent or neighboring property owner who shall be damaged by the violation of any provision of this ordinance, may institute, in addition to the other remedies provided by law, injunction, mandamus, abatement or any other appropriate action, proceeding or proceedings to prevent or abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

SECTION 16-12 **LEGAL PROCEDURES**

A. Notice of Violation/Summons

Except in cases of alleged imminent hazards, the Community Development Director or the Director's designee shall provide reasonable written notice to the owner, occupant, and/or the person, firm, sole proprietorship, corporation, partnership, LLC, or other entity in possession of the property in violation of the UDC in an attempt to obtain voluntary compliance with the provisions of the UDC or go to hearing.

1. Reasonable notice shall consist of written notification and shall include the following:
 - a. Identification of the property in violation by street address if known and if not known, by tax parcel number.

- b. A clear description of the violation(s) of the UDC and request for voluntary compliance by correction of the described violation(s) within thirty (30) days from the date of the Notice of Violation. Such thirty-day period shall include weekends and holidays.
- c. A warning that if the violation(s) is not corrected within thirty (30) days from the date of the Notice of Violation, the County may pursue enforcement of the UDC by issuance of summons to the individual to be present at the next hearing.
- d. A warning that each person, firm, sole proprietorship, corporation, partnership, LLC, or other entity violating any provision of the UDC shall be subject to the Civil Penalties set in accordance with [Article 16 of this Unified Development Code](#).
- e. The right to meet with and discuss the Notice of Violation with the issuer of the Notice, within thirty (30) days of the date of the Notice. Such thirty-day period shall include weekends and holidays.

B. Service of Notice of Violation

- 1. The Notice of Violation shall be hand delivered or mailed by certified mail to the property address;
- 2. to the last known mailing address of the property owner; and
- 3. To the occupant, or such other person, firm, sole proprietorship, corporation, partnership, LLC, or other entity in possession or control of the property, if such mailing address is different from the property address.

C. Notice of Violation/Summons/Complaint for appearance before hearing officer

1. Commencement of Action

Every action or proceeding brought before the Hearing Officer for a civil violation of any referenced ordinance shall be commenced by the filing of a complaint with the Code compliance Supervisor by an officer authorized to file such complaints.

- 2. Complaints shall contain the name and address of the alleged violator, or legal description and/or the address of site of violation, a statement of facts constituting the specific violation, and the ordinance or regulation of designation of the violation.
- 3. Service of Notice of Violation/Summons/Complaint

Service of the Notice of Violation/Summons may be accomplished and will be deemed effective and complete by any of the following methods:

- a. The complaint shall be accompanied by a Notice of Hearing which shall set forth a date for appearance.
- b. The Complaint and Notice of Hearing shall be personally served on the alleged violator at least fifteen (15) days prior to the appearance date. If the County Officer is unable to personally serve the notice, then the complaint and notice may be served by Certified Mail in accordance with [Section 16-12, Paragraph C of this code](#).

- c. Any Notice served upon the alleged violator other than by personal service shall be served at least thirty (30) days prior to the date for appearance.

D. Procedure in Hearing

1. Civil Hearing Officer

The Hearing Officer shall be hired by the county.

2. Appearance

- a. The defendant may admit or deny responsibility by appearing in person at the time and date set to appear and entering a plea, or by mailing to the Code Compliance Supervisor a completed, signed and dated Notice to Appear and Entry of Plea form provided with the complaint.
- b. In lieu of such form, a short statement signed by the defendant or his/her attorney admitting or denying the allegations of the complaint, which must be received in the office of the Code Compliance Supervisor by 5:00 p.m. on the business day prior to the date set for appearance and plea.

3. Default Judgment

- a. Failure to appear per Notice of Violation/Summons
 - i. If the defendant fails to appear as directed on the Notice of Violation/Summons, the hearing officer shall enter a default judgment against the defendant and impose civil penalties.
 - ii. If the defendant fails to comply with the decision entered by the Hearing Officer, the County may file an affidavit setting forth the facts relating to the defendant's noncompliance and request the Hearing Officer to enter an Order to Show Cause requiring the defendant to appear and show cause why additional penalties should not be imposed for noncompliance.
- b. Failure to appear at final hearing
If the defendant fails to appear at the final hearing, the hearing officer shall enter a default judgment against the defendant.

4. Record of proceedings

A record of the hearing shall be made by audio tape. Defendant may have proceedings recorded by a court reporter at defendant's expense.

5. Burden of proof at hearing; Witnesses

Each party shall be responsible for compelling the attendance of its respective witnesses. The burden of proof at the hearing shall be by a preponderance of the evidence.

6. Rules of Evidence

The Arizona Rules of Evidence shall not apply. Any evidence offered may be admitted subject to a determination by the hearing officer that the offered evidence is relevant and material and has some probative value to a fact at issue. Nothing in this rule is to be construed as abrogating any statutory provision relating to privileged communications.

7. Judgment

If, after final hearing, the hearing officer determines the existence of a violation(s), or in the event the defendant admits the allegations in the Notice of Violation/Summons or complaint, the hearing officer shall enter judgment in favor of the plaintiff. Written judgment shall be rendered not later than ten (10) working days after conclusion of the final hearing.

8. Penalties

If the defendant at the conclusion of the hearing is found responsible for the civil violation, the Hearing Officer shall enter a decision for the County and impose a civil penalty as set forth in the applicable Gila County Development Codes.

a. Monetary penalty

A penalty for the first violation for an individual person is not more than seven hundred dollars (\$700.00) per day of continuing violation as determined by the hearing officer, or as admitted by defendant. For an enterprise, not more than ten thousand dollars (\$10,000) per day of continuing violation.

b. Other Penalties

Any other order deemed necessary or appropriate in the discretion of the hearing officer.

c. Additional penalty for failure to comply with judgment

Failure of a defendant to comply with any order contained in a judgment entered by the hearing officer shall result in an additional penalty for an individual of not less than one hundred dollars (\$100.00) nor more than seven hundred dollars (\$700.00) per day of continuing violation for each day such defendant fails to comply after the date ordered to do so. For an enterprise, not more than ten thousand dollars (\$10,000) per day of continuing violation.

9. Notice of Right to Appeal

Following the decision and imposition of a civil penalty and at the conclusion of the hearing, the Hearing Officer shall advise the defendant of defendant's right to a review of the Hearing Officer's final decision by the Board of Supervisor.

a. Notice of Request for Appellate Review

The party requesting appellate review shall file a written Notice of Request for Appellate Review with the Code Compliance Supervisor within fifteen (15) days after the signing of the final decision, notice or order by the Hearing Officer.

- b. Transmission of Record
Within twenty (20) working days after notice of appeal is filed, the Code Compliance Supervisor shall prepare and transmit the record to the Clerk of the Board.
- c. The parties may stipulate that the review may be on less than a complete record or upon stipulated facts. The designation of the stipulated record shall be in writing and filed with the Code Compliance Supervisor within ten (10) days after filing of the Notice of Request for Appellate Review.
- d. Upon transmission of the record, the Clerk of the Board shall send notice by mail to all parties that the record has been transmitted and stating that written memoranda are due within fifteen (15) working days from the date of transmission of the record by the Code Compliance Supervisor.

10. Appellate Memoranda

- a. Each party may file a written memorandum no later than fifteen (15) working days following the date of transmission of the record to the Board.
- b. Oral Argument
 - i. Limited to five (5) minutes for each party, unless extended by the Board.
 - ii. Oral argument shall be based on the record and there shall be no presentation of new evidence.
- c. Disposition by the Board
After determination of an appeal, the Board of Supervisors may:
 - i. Affirm the decision of the hearing officer; or
 - ii. affirm in part and reverse in part and, if necessary remand for further proceedings; or
 - iii. reverse the action of the Hearing Officer and, if necessary remand for further proceedings.

SECTION 16-13

INSPECTIONS

The Zoning Inspector or any Deputy Inspector, or any other enforcement officer may, in the discharge of his or her duties as stated herein, and for good or probable cause, enter any premises, building, or structure at any reasonable hour to inspect the same in connection with any application made under the terms of this Ordinance, or for any investigation or inspection as to whether or not any portion of such premise, building or structure is being used in violation of this Ordinance. In all cases in which permission to inspect has been refused, the owner or occupant of any premises sought to be inspected shall be given written notice personally or by registered mail at least twenty-four (24) hours before such inspection takes place. Every person who denies, prevents, or obstructs access to such premises after receipt of such written notice, or so attempts, shall be considered guilty of misdemeanor.

**SECTION 16-14
CLEAN AND LIEN**

A. Purpose

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.

B. 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 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.

C. 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.

D. 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 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 **Section 16-12.C, and 16-12.D** which shall be served pursuant to 16-12.D 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.

E. 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 thirty (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 its 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 fifteen (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.

F. 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 fifteen (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 and 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 and 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.

G. 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.

H. Removal by Board

If the Owner, Lessee, or Occupant fails to remove or otherwise abate the hazard to Public Health and Safety within thirty (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 one hundred eighty (180) days after the right to do so accrues, a new Notice of Violation shall be served as provided in Section 16-14.D.

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.

I. 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.

J. 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 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 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 fifteen (15) days after the service of the Notice. Failure to file an appeal according to the appeal procedures in the section of the code shall be a waiver of the right to appeal to the Board of Supervisors.

K. Report of Assessment

1. 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:
 - a. The street address, parcel number and/or a legal description sufficient for Identification of the property on which the violation occurred;
 - b. a statement of what the violation is; and
 - c. 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.

L. 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.

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

3. 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.
4. 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.)

N. Recordation

If the owner, lessee, or occupant fails to pay the assessment within thirty (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.

O. 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.

P. 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.

1. 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:
 - a. Assessments of less than five hundred dollars (\$500) shall be paid within one (1) year after the assessment is recorded.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. Assessments of ten thousand dollars (\$10,000) or more shall be paid within ten (10) years after the assessment is recorded.

Q. 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.

R. Additional Penalties

1. 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.

2. Fine

Upon conviction of a violation of Section 16-14.R.1 of this Ordinance, the court shall impose a fine of not less than one hundred Dollars (\$100.00).

3. 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 A.R.S 13-2908, 36-602, and 49-143.