GILA COUNTY WASTEWATER ORDINANCE NO. 2014-02

AN ORDINANCE TO AMEND AND REPLACE GILA COUNTY WASTEWATER ORDINANCE NO. 01-2 ADOPTED BY THE BOARD OF SUPERVISORS ON DECEMBER 4, 2001, THAT ESTABLISHED MINIMUM QUALIFICATION STANDARDS FOR PERSONS PERFORMING SOIL CHARACTERIZATIONS, PERCOLATION TESTS, SITE INVESTIGATIONS, AND ON-SITE WASTEWATER TREATMENT FACILITY DESIGN; PROHIBITING PERFORMANCE OF SUCH SERVICES BY PERSONS WITH A DOCUMENTED HISTORY OF REPORTING INACCURATE RESULTS, PRODUCING INADEQUATE DESIGNS, OR OTHER POTENTIALLY UNETHICAL OR UNACCEPTABLE BEHAVIOR; ADDITIONAL NOTICE OF INTENT TO DISCHARGE, DESIGN AND INSTALLATION REQUIREMENTS; REPAIR OF EXISTING ON-SITE WASTEWATER TREATMENT FACILITIES; PENALTIES; AND THE APPEALS PROCESS

WHEREAS, the Gila County Board of Supervisors is empowered to make and enforce all sanitary regulations not in conflict with general law, pursuant to AR.S. §11-251(31), and may adopt ordinances necessary or proper to carry out the county's responsibilities not otherwise limited or conflicting with other laws, pursuant to A.RS. §11-251.05(A); and

WHEREAS, the State of Arizona has adopted technical and procedural standards for the practice of site investigation, soil characterization, percolation testing, system selection and design of on-site wastewater treatment facilities having a design flow of less than 24,000 gallons per day, but has not set minimum qualification standards for the individuals performing these functions; and

WHEREAS, the preservation of the health and welfare of the citizens of Gila County, and the efficient and effective performance of Gila County's delegated regulatory duties is dependent upon how well these tasks are performed; and

WHEREAS, minimum qualification standards are necessary to ensure that the individuals performing these functions have the technical knowledge and skills necessary to conform with the required technical and legal standards and procedures for these tasks; and

WHEREAS, it is necessary to provide the regulated community with an avenue to appeal the on-site wastewater treatment facility licensing decisions made by the Gila County staff; and **WHEREAS**, the Board of Supervisors has properly noticed this ordinance in compliance with A.RS §11-251.05(C);

NOW, THEREFORE, be it ordained by the Board of Supervisors of Gila County, Arizona, as follows:

SECTION 1
APPLICATION

This ordinance establishes the minimum qualification for persons performing soil characterizations, percolation tests, site investigations, on-site wastewater treatment facility design; and prohibiting performance of such services by persons with a documented history of reporting inaccurate results, producing inadequate designs, or other potentially unethical or unacceptable behavior.

Also included in this ordinance is the notice of intent to discharge; design and installation requirements; repair of existing on-site wastewater treatment facilities; penalties; and the appeals process.

SECTION 2
QUALIFICATIONS REQUIRED

Soil characterizations; percolation tests; site investigations; on-site wastewater treatment facility design; persons authorized to perform; additional notice of intent to discharge; design and installation requirements; and repair of existing on-site wastewater treatment facilities.

A. All site investigations, percolation testing, soil characterizations, system selection and design of on-site wastewater treatment facilities shall be conducted in accordance with Arizona Administrative Code Title 18, Chapter 9, Articles 1 and 3.

B. The services referenced in Section 2(A) shall be performed only by the following persons:

   1. Professional engineers or geologists licensed by the Arizona Board of Technical Registration pursuant to A.R.S. §32-121 *et seq*, with knowledge of and competence with the preparation of the design documents and submittals for such systems, unless exempted under ARS §32-144(A)(6).

   2. Sanitarians registered with the Arizona Sanitarians' Council pursuant to A.R.S. §36-136.01, with knowledge of and competence with the preparation of the design documents and submittals for such systems.

3. Persons who have demonstrated proficiency in site investigations and soil characterizations, and the selection and design of on-site wastewater systems, and who have met all the following requirements:

   a. Successful completion of "Gila County Listing Course" and/or other specified classes presented by the Gila County Community Development Division along with their associated prerequisite courses. Those persons who have successfully completed the "Gila County Listing Course" presented by the Gila County Community Development Division or have within the two years following their most recent listing, successfully completed a specified "Re-Listing Course" and its associated prerequisites, if any, shall be considered qualified to perform the tasks specified in this section. The Gila County Community Development Division shall expressly state whether or not any classes it presents, along with the associated prerequisite courses, if any, to the regulated community after the effective date of this ordinance will qualify the prospective attendees to perform the services referenced in this section.

   b. Maintained a satisfactory history of producing accurate results and adequate designs.

4. The Gila County Community Development Division reserves the right to not accept results from persons or firms with a documented history of reporting inaccurate results, producing inadequate designs, or other actions that may result in violations of the provisions of Arizona Administrative Code Title 18, Chapter 9, Articles 1 and 3.

   a. A "documented history" is defined as three written notices of reporting inaccurate results, producing inadequate designs, or other actions that resulted or may result in violations of the provisions of Arizona Administrative Code Title 18, Chapter 9, Articles 1 and 3 issued to the person or firm over the cumulative time of listing of that person or entity.

   b. An alleged violator shall be entitled to an administrative hearing on any decision of the Gila County Community Development Division not to accept results from persons or firms with a documented history of reporting inaccurate results, producing inadequate designs, or other actions that may result in violations of the provisions of Arizona Administrative Code Title 18, Chapter 9, Articles 1 and 3 as provided in Gila County Ordinance No. 05-01 titled Gila County Hearing Officer Rules of Procedure.

SECTION 3
SITE INVESTIGATIONS, PERCOLATION TESTING, AND SOIL CHARACTERIZATIONS

A. All site investigations, percolation testing, and soil characterizations pertaining to on-site wastewater treatment facilities shall be witnessed by a member of the Gila County

Community Development Division staff in order to be valid. Any results of such activities, which are performed without being witnessed by Gila County Community Development Division staff may be considered invalid.

1. The Gila County Community Development Division may require percolation testing to resolve disputes in those instances where the site investigator and the Gila County Community Development Division staff are unable to reach an agreement on the soil's ability to absorb water as determined by soil characterization methods.

2. The Gila County Community Development Division may require percolation testing when the soil type and structure are such that soil characterization methods are difficult to apply properly. Such soil types and structures include, but are not limited to, composed granite, fractured shale, fractured sandstone, etc.

SECTION 4
WASTEWATER TREATMENT FACILITY DESIGN

A. Conventional on-site wastewater treatment facilities regulated under Arizona Administrative Code R18-9-E302 (General Permit 4.02) and Composting Toilet & Gray Water System facilities regulated under Arizona Administrative Code R18-9-E303 (General Permit 4.03) may be designed by any person qualified under Section 2(B) of this ordinance.

B. Alternative on-site wastewater treatment facilities regulated under Arizona Administrative Codes R18-9-E304 through R18-9-E323 (General Permits 4.04 through 4.23) shall be designed by professional engineers licensed by the Arizona Board of Technical Registration pursuant to A.R.S. §32-121 *et seq,* with knowledge of and competence with such systems. Site Plans for Low Pressure and STEP Systems may be designed by any person qualified under Section 2(B) of this ordinance. The pump and low pressure piping portions of these systems are considered to be alternative on-site wastewater treatment facilities as defined in this paragraph and shall be designed by professional engineers licensed by the Arizona Board of Technical Registration pursuant to A.R.S. §32-121 *et seq,* with knowledge of and competence with such systems.

C. Surveying performed for the purposes of establishing property boundaries, corners and bench mark elevations shall be performed by or under the direct supervision of a professional land surveyor registered by the Arizona Board of Technical Registration pursuant to A.R.S. §32-121 *et seq.* Any other surveying for the purpose of establishing surface slopes or topographical grades shall be performed by or under the direct supervision of a person qualified to perform the tasks specified in section 2(B) of this ordinance.

D. A Gila County Septic Compliance Report and a Gila County Floodplain Status Report shall accompany each on-site wastewater treatment facility notice of intent to discharge form submitted to the Gila County Community Development Division.

E. The Gila County Community Development Division may deny requests made for an alternative feature of design, installation, or operational feature under Arizona Administrative Code R18-9-A312(G) when the applicant is unable to demonstrate that the proposed alternative feature satisfies both of the following criteria specified in Code R18-9-A312(G):

1. The proposed alternative feature addresses site or system conditions more satisfactorily than the general permit requirement, and;

2. The proposed alternative feature achieves equal or better performance compared with the general permit requirement.

F. The Gila County Community Development Division may expressly require a person requesting an alternative feature of design, installation or operational feature under Arizona Administrative Code R18-9-A312(G) to submit written documentation prepared by a professional engineer (other than the original designer of the on-site wastewater treatment facility), a registered geologist with a strong background in hydrology, registered by the Arizona Board of Technical Registration pursuant to A.R.S. §32-121 *et seq,* or other qualified professional as necessary to demonstrate conformance with Arizona Administrative Code Title 18, Chapter 9, Articles 1 and 3.

SECTION 5
WASTEWATER TREATMENT FACILITY INSTALLATION

A. A property owner or applicant may not install an alternative on-site wastewater treatment facility regulated under Arizona Administrative Codes R18-9-E303 through R18-9-E323 (General Permits 4.03 through 4.23) for his or her own use, unless the property owner or applicant possesses a valid license issued by the Arizona Registrar of Contractors which would allow the homeowner or applicant to contract to install an on-site wastewater treatment facility.

B. No person shall repair or replace an existing on-site wastewater treatment facility, unless they have met all of the following requirements:

1. They meet one or more of the qualification requirements given in Section 2.

2. They obtain an on-site wastewater treatment facility permit from the Gila County Community Development Division before beginning the repair or replacement.

3. The repair or replacement conforms to Arizona Administrative Code Title 18, Chapter 9, Articles 1 and 3 to the maximum extent practicable.

SECTION 6
VIOLATIONS/PUBLIC NUISANCE

A. The following conditions constitute environmental nuisances dangerous to the public health and the environment:

1. All sewage, human excreta, wastewater, gray water or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.

2. Any vehicle or container used in the transportation of human excreta which is defective and allows leakage or spillage of contents.

3. The maintenance of any overflowing septic tank or cesspool of which the contents may be accessible to flies and other insects and rodents.

4. The use of the contents of privies, cesspools or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of the Arizona Department of Environmental Quality or the Arizona Department of Health Services.

5. The pollution or contamination of any domestic waters that is a direct result of the conditions listed above.

B. Abatement of environmental nuisances dangerous to the public health and the environment:

1. If an environmental nuisance exists on private property, the Gila County Community Development Division may order the owner or occupant to remove the nuisance within twenty-four (24) hours, as authorized under §49-143 of the Arizona Revised Statutes (A.R.S.), at the expense of the owner or occupant. This order will be in the form of a notice of violation served as required by law and delivered to the owner and/or occupant of the property. If the owner or occupant fails or refuses to comply with the order, the Gila County Community Development Division may take any or all of the following actions:

   a. Remove or have the nuisance removed using the methods and procedures prescribed in Gila County Ordinance No. 08-02, title Clean and Lien Ordinance.

   b. Notify the water utility company so they may disconnect water service to the property to prevent the danger to the public health from increasing.

   c. Where water to the property is provided by a private well with a pump supplied with power furnished by a utility company, notify the power utility company so they

may disconnect power to the property to prevent the danger to the public health from increasing.

d. Charge the owner or occupant who caused the nuisance with a violation of this section.

SECTION 7
ADMINISTRATION AND ENFORCEMENT

A. It shall be the duty of the Gila County Community Development Division Wastewater Department Manager to administer and enforce this ordinance. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the Community Development Division Director shall have the authority to appoint the related technicians, sanitarians, inspectors and other employees as necessary to assist the Wastewater Department Manager. Such employees shall have the powers as delegated by the Board of Supervisors through the Community Development Division Director. All Gila County law enforcement officials and agencies shall, whenever requested by the Wastewater Department Manager, enforce this ordinance and any sections of A.R.S. Title 36 or Title 49 granting authorities or assigning duties and responsibilities to the director of a county environmental department or any State of Arizona statute or code delegated to the Gila County Development Division, to the extent that they are lawfully authorized.

B. If the Gila County Community Development Division Wastewater Department Manager has reason to believe that a person has violated any Gila County wastewater, health, environmental or sanitary ordinance or any sections of A.R.S. Title 36 or Title 49 granting authorities or assigning duties and responsibilities to the director of a county environmental department or any State of Arizona statute or code delegated to the Gila County Development Division, the Wastewater Department Manager may issue a notice of violation and demand for compliance by certified or registered mail or by hand delivery to the respondent. Violations of any of the aforementioned ordinances, statutes or codes shall be processed pursuant to Gila County Ordinance No. 05-01, titled Gila County Hearing Officer Rules of Procedures.

SECTION 8
PENALTIES; REMEDIES

A. Criminal Penalties: Any person, firm or corporation, whether as principal, owner, applicant, 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 1 Misdemeanor. Each and every day during which the illegal activity, use or violation continues is a separate offense.

B. Civil Penalties: Any person, firm or corporation, whether as principal, owner, applicant, 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 pursuant to Gila County Ordinance No. 05-01, titled Gila County Hearing Officer Rules of Procedures. An alleged violator shall be entitled to an administrative hearing on his liability, and a review by the Board of Supervisors as provided in the Ordinance No. 05-01.

C. Remedies: An alleged violator who is served with the 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 the 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 9
APPEALS

Nothing in this ordinance shall preclude any individual, company or corporation from seeking redress through the courts concerning any portion of this ordinance or any ruling made by the Gila County Community Development Division. The method of appealing a civil penalty imposed by the Gila County Hearing Officer is outlined in Gila County Ordinance No. 05-01, titled Gila County Hearing Officer Rules of Procedures. An alleged violator shall be entitled to an administrative hearing on his liability, and a review by the Board of Supervisors as provided in Ordinance No. 05-01. The method of appealing
verdicts of a criminal penalty is outlined in the State of Arizona Rules of Criminal Procedure.

SECTION 10
SEVERABILITY

Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, it is the intent of the Board of Supervisors that the remainder of this ordinance shall not be affected thereby, and shall continue in full force and effect.

SECTION 11
EFFECTIVE DATE AND TERRITORIAL APPLICABILITY

A. This ordinance shall apply to all services denoted in Section 1 which are performed on or after 30 days after the adoption of this ordinance.

B. This ordinance shall be effective in all unincorporated areas of Gila County, and shall be effective in any incorporated city or town which may approve, by resolution, the application or enforcement of this ordinance within that city's or town's boundaries, pursuant to §A.R.S. 11-251.05(D).

PASSED AND ADOPTED this 1st day of April 2014, Globe, Gila County, Arizona.

Attest:

Marian Sheppard
Clerk of the Board of Supervisors

GILA COUNTY BOARD OF SUPERVISORS

Michael A. Pastor, Chairman

Approved as to form:

Bryan Chambers
Deputy Attorney Principal