

ORDINANCE NO. 2009-_____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, RELATING TO THE REMOVAL OF RUBBISH, TRASH, WEEDS, FILTH DEBRIS, AND DILAPIDATED BUILDINGS THAT CONSTITUTE A HAZARD TO PUBLIC HEALTH AND SAFETY; AMENDING THE PIMA COUNTY CODE BY AMENDING TITLE 7, CHAPTER 7.33 TO IMPROVE THE CLARITY OF THE MEANING OF "WEED", ADD DILAPIDATED BUILDINGS AND REVISE THE PROVISIONS AND PROCEDURES FOR REMOVAL, ABATEMENT, INJUNCTION, AND COST RECOVERY.

WHEREAS, A.R.S § 11-268 allows Pima County to remove, abate or enjoin rubbish, weeds, filth, debris, and dilapidated buildings which constitute a hazard to public health and safety.

WHEREAS, A.R.S. § 3-201 and Arizona Administrative Code R3-4-244 clearly define "noxious weed."

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. Title 7, Chapter 33 of the Pima County Code is hereby amended to add Sections 7.33.023, 7.33.025 and 7.33.055 and to amend Sections 7.33.010, 7.33.020, 7.33.030, 7.33.040, 7.33.050, 7.33.060, and 7.33.070 as follows:

7.33.010 Definitions.

A. In this chapter, unless the context otherwise requires:

1. "Contiguous areas" means sidewalks, streets, trails and alleys dedicated and open to the public that are contiguous to property.
2. "Occupant" means an occupant of property, but does not include any corporation or association operating or maintaining rights-of-way for and on behalf of the United States of America, either under contract or under federal law.
3. "Property" means real property including buildings, grounds and lots.

4. "Weed" includes any species of plant that is listed in Arizona Administrative Code R3-4-244, including Pennisetum ciliare (L.) Link-Buffelgrass

7.33.020 Removal.

The owner, lessee or occupant of property shall remove all rubbish, trash, weeds, filth, debris, and dilapidated buildings that ~~which~~ constitute a hazard to public health ~~or~~ and safety from the property and contiguous areas.

7.33.023 Calculation of Time.

A. Unless otherwise specified, time periods for actions involving an opportunity to correct for weeds shall be calculated as follows:

1) for time periods of 14 days or less, only business days are included in calculating the total number of days;

2) for time periods of longer than 14 days, each calendar day is included in calculating the total number of days;

3) for all time periods, the date on which the time period begins to run is excluded from the calculation of the total number of days.

B. Calculation of time for purposes of actions involving the opportunity to correct shall begin upon the signature date on the certified receipt or date hand delivered by the county.

C. Calculation of time for situations where the certified mail sent by Pima County is:

1) refused by the recipient, the time shall begin on the date of refusal; or

2) unclaimed, the time shall begin 15 calendar days from the Postal Service's first attempt to deliver.

7.33.025 Opportunity to Correct for Weeds.

A. Upon reasonable belief that a violation of Section 7.33.020 has occurred with respect to weeds listed in Arizona Administrative Code R3-4-244, the county shall provide the owner, lessee or occupant an opportunity to correct the violation . The Opportunity to Correct shall be sent by certified mail or hand delivered.

B. The Notice of Opportunity to Correct shall include the following:

1. A requirement that the owner, lessee, or occupant notify the county, in writing, that they have received notice within 30 days of receipt of the notice.
 2. A requirement that the owner, lessee or occupant develop a written abatement plan to be submitted to the county within 60 days of receipt of the notice. The abatement plan shall include:
 - a) A map identifying the property and extent of weed infestation
 - b) A description and schedule of management and eradication techniques to be implemented
 - c) An estimated cost of implementing the abatement plan. The basis for the cost estimate shall be specified.
 - d) A statement of any other legal or physical factors or characteristics affecting the plan
- C. The owner, lessee or occupant shall provide additional information as requested by the county to address deficiencies in a submitted abatement plan. The owner, lessee or occupant shall be allowed an opportunity to amend the abatement plan before denial. Failure to provide adequate information or respond to the county's request for information within the time frame specified by the county may result in the county issuing a Notice of Abatement.
- D. The county shall approve or deny the abatement plan. If denied, the county shall state in writing the reasons for denial. Denial of an abatement plan may result in the county issuing a Notice of Abatement.
- E. Pima County's decisions concerning a Notice of Opportunity to Correct or an abatement plan are not appealable.

7.33.030 Notice of ~~violation~~ Abatement.

- A. A county department director, or designee, may issue a notice of abatement when:
1. The director reasonably believes that a violation Section 7.33.020 has occurred; or,
 2. An acceptable abatement plan required by Section 7.33.030 is not submitted; or,
 3. An approved abatement plan is not complied with.
- B. The notice shall include the following:

- ~~1. Provide a notice of violation in writing which shall be served upon the owner, lessee or occupant personally or by certified United States mail at their last known address, or at the address on file in the county treasurer's office to which the most recent property tax bill was mailed. If a notice of violation is served upon a lessee or occupant of property who is not the owner of the property, a copy of the notice shall be mailed to the owner by first class United States mail to the owner's last known address or may be served by any other means reasonably calculated to provide the owner with notice.~~
 - ~~2. The notice shall provide that the owner, occupant or lessee shall have thirty days to remove any rubbish, trash, weeds, filth or debris upon the property or contiguous areas and the estimated cost to the county for the removal.~~
 - ~~3. The notice shall provide that the owner, occupant or lessee shall have ten days to appeal the issuance of the notice to the board. The date of mailing of the appeal shall be the date of filing. All appeals of notices shall be in writing and shall specify the grounds for appeal. The appeal shall be filed with the clerk of the board.~~
 - ~~4. The board shall set a date to hear the appeal after receipt of a notice of appeal timely filed. Written notice of the hearing shall be provided to the appropriate county departments and to the owner, lessee or occupant who is appealing. The board shall determine, based upon a preponderance of the evidence, whether a violation of the ordinance has occurred and shall issue its determination in writing upholding or reversing the notice of violation. The decision of the board shall be final.~~
1. A compliance date, which is not less than 30 calendar days from the notice date, to remove all rubbish, trash, weeds, filth, debris, and dilapidated buildings that constitute a hazard to public health and safety from the property and contiguous areas;
 2. The estimated cost to the county for the removal if the owner, occupant or lessee, does not comply. The basis for the cost estimate shall be included in the notice.
- C. Within 10 business days of the date of the Notice of Abatement the owner, occupant or lessee may appeal the notice to the Board of Supervisors. All appeals shall be in writing

and shall specify the grounds for appeal. The appeal shall be filed with the Clerk of the Board. The date of mailing of the appeal shall be the date of filing. The Clerk of the Board shall set a date to hear the appeal after receipt of a timely notice of appeal. Written notice of the hearing shall be provided to the appropriate county departments and to the owner and any lessee or occupant who is appealing. The Board of Supervisors' decision is final.

- D. The notice of abatement shall be personally served or sent by certified mail to the owner and any lessee or occupant at their last known address, or at the address on file in the County Treasurer's office to which the most recent property tax bill was mailed. If the owner of the property does not reside on the property, a duplicate notice shall be mailed to the owner at the owner's last known address. The notice of abatement should be mailed to any known lienholder.
- E. The county may provide a copy of the notice of abatement to the local fire authority.

7.33.040 Assessments Abatement by county.

- A. Upon expiration of the thirty days after issuance of the notice provided for in Section 7.33.030 of this chapter or upon issuance of the final decision of the board in writing upholding issuance of the notice provided for in Section 7.33.030, the environmental officer shall If the owner, lessee, or occupant fails to remove or abate all rubbish, trash, weeds, filth, debris, and dilapidated buildings by the compliance date determined in the Notice of Abatement, or the Board of Supervisors' final appeal hearing decision, the county may remove, abate, enjoin or cause the removal or abatement of the rubbish, trash, weeds, filth, debris, and dilapidated buildings by the county's employees, agents or contractors at the expense of the owner, lessee or occupant.
1. ~~Issue an order of abatement directing the removal of all rubbish, trash, weeds, filth or debris by the county's employees, agents or contractors ten days after the issuance from the property or contiguous areas which were the subject of the notice under Section 7.33.030. The order shall be in writing and signed by the county manager or his designee. The order shall include the estimated actual cost for the removal, including a five percent surcharge to recover the county's incidental costs incurred in connection with the removal or abatement.~~

- ~~2. A copy of the order of abatement shall be posted upon the subject property. The order shall also be sent by certified United States mail to the owner, lessee or occupant at their last known address or their most recent address to which a property tax bill was mailed by the county treasurer. If the order who is not the owner of the property, a duplicate notice shall also be sent to the owner at the owner's last known address.~~
- ~~3. After ten days have elapsed from the date of issuance of the order of abatement, the county's employees, agents or contractors may enter upon said property and remove all rubbish, trash, weeds, filth, or debris from any property or contiguous areas which were the subject of a notice issued pursuant to Section 7.33.030.~~

B. The county shall provide advance written notice identifying the scheduled date of abatement to the owner, lessee or occupant at their last known address, or at the address on file in the County Treasurer's office to which the most recent property tax bill was mailed. The notice shall be sent by certified mail or hand delivered. If the owner of the property does not reside on the property, a duplicate notice shall be mailed to the owner at the owner's last known address.

7.33.050 Assessments.

- ~~4. A. Within thirty days after~~After the county, its employees, agents or contractors have removed, abated, or caused the removal or abatement of the rubbish, trash, weeds, filth, debris, and dilapidated buildings pursuant to this ~~section~~ Chapter, the county shall issue ~~an~~ a written Order of Assessment. ~~The order shall be in writing and shall list~~ The Order of Assessment shall include the following:
1. The date of the assessment;
 2. The common address, legal description and tax parcel number of the property; ;
and
 3. ~~The order shall also list actual-~~ The amount of the assessment, including a detailed itemized list of costs for removal including ~~the five percent surcharge levied by the county.~~ all incidental costs, legal costs, and costs for any additional inspections;
- B. The owner may request an informal review of the detailed itemized cost with the county department issuing the assessment. The request shall be made in writing, and received by the county department director within 10 business days of the date of the order of

assessment. Unless the director and owner agree otherwise, the informal review shall take place within 20 calendar days after the director's receipt of the request. The director shall arrange the date and location of the informal review with the owner at least 10 business days before the informal review. The director shall review whether itemized costs including all incidental costs, legal costs, and additional inspection costs are correct and reasonable for the tasks involved. The director may adjust the costs based upon the informal review. The director shall mail his or her decision on the informal review to the owner within 10 business days after the informal review date.

C. The owner, lessee, lienholder or occupant shall have 10 business days from receipt of the Order of Assessment or the receipt of the director's written decision on an informal review to appeal the assessment to the Board of Supervisors as provided in subsection E of this section.

D. The order shall be signed by the county manager or his designee and The Order of Assessment shall be recorded in the office of the County Recorder when the time to appeal expires, if the owner agrees to the amount or on final decision on an appeal by the Board of Supervisors. 5. The order of assessment shall contain the following notice in bold face print:

NOTICE: THIS ORDER OF ASSESSMENT PURSUANT TO A.R.S. 11-268(D) SHALL CONSTITUTE A LIEN UPON THE PROPERTY DESCRIBED IN THIS ORDER IN FAVOR OF PIMA COUNTY. THE COUNTY MAY TAKE LEGAL ACTION TO FORECLOSE THE LIEN AND SELL THE PROPERTY DESCRIBED TO RECOVER THE COSTS INDICATED IN THIS ORDER OF ASSESSMENT.

~~6. The order of assessment shall indicate that the owner, lessee or occupant shall have ten days from the date of issuance to appeal the amount of assessments levied by the county. The date of mailing of orders of assessment shall be in writing and shall specify the grounds for appeal of the assessment. Only the amount of assessment may be appealed. The board shall not hear any appeals of violations upon appeal of an order of assessment.~~

~~7. The board shall set a date to hear the appeal of an order of assessment after receipt of a notice of appeal timely filed. Written notice of the hearing shall be provided to the department and to the owner, lessee or occupant who is appealing. The board~~

~~shall determine based upon a preponderance of the evidence whether the assessment was made in accordance with the provisions of this chapter and state statute and whether the amount actually represents the costs incurred by the county. The board shall issue its determination in writing upholding or modifying the amount of assessment. The decision of the board shall be final.~~

- E. Within 10 business days of the Order of Assessment or the decision on an informal review the owner, occupant, lienholder or lessee may appeal the amount of the assessment levied by the county to the Board of Supervisors. All appeals shall be in writing and shall specify the grounds for appeal. Only the amount of the assessment may be appealed. The Board of Supervisors shall not hear any appeals of violations upon appeal of an order of assessment. The appeal shall be filed with the Clerk of the Board. The date of mailing of the appeal shall be the date of filing. The Clerk of the Board shall set a date to hear the appeal after receipt of a timely notice of appeal. Written notice of the hearing shall be provided to the appropriate county departments and to the owner, lessee, lienholder or occupant who is appealing. The Board of Supervisors shall determine whether the assessment was made in accordance with the provisions of this Chapter and state statute and whether the amount actually represents the costs incurred by the county. The Board of Supervisors shall issue its determination in writing upholding or modifying the amount of the assessment. The Board of Supervisors' decision is final.
- ~~8. F.~~ The order of assessment shall indicate that the assessment shall be paid to the Pima County Treasurer. Further, the order of assessment shall provide that and any delinquent assessments shall bear interest at the legal rate from the date of delinquency. Interest will accrue at the rate stated in A.R.S. § 44-1201(A).
- ~~9. G.~~ A prior assessment under this chapter Chapter is not a bar to a subsequent assessment or assessments under this chapter Chapter, and any number of liens pursuant to this chapter Chapter may be enforced in the same action.
- H. Assessments that are imposed under this Chapter run against the property until they are paid and are due and payable in equal annual installments as follows:
1. Assessments of less than five hundred dollars shall be paid within one year after the assessment is recorded.

2. Assessments of five hundred dollars or more but less than one thousand dollars shall be paid within two years after the assessment is recorded.
3. Assessments of one thousand dollars or more but less than five thousand dollars shall be paid within three years after the assessment is recorded.
4. Assessments of five thousand dollars or more but less than ten thousand dollars shall be paid within six years after the assessment is recorded.
5. Assessments of ten thousand dollars or more shall be paid within ten years after the assessment is recorded.

7.33.050 ~~Lien enforcement.~~

- ~~A.I.~~ The ~~department~~ county shall maintain a list of all delinquent assessments made pursuant to this ~~chapter~~ Chapter.
- ~~B.J.~~ All assessments sixty calendar days delinquent shall be forwarded to the County ~~manager~~ Administrator or his designee for review. If the County ~~manager~~ Administrator or his designee determines that the value of the assessment and interest, together with the value of all other liens having priority over the assessment does not exceed the value of the property, the county attorney may commence legal action to foreclose the lien and request the superior court to order the property sold and the proceeds used to pay off all liens having priority and the assessment and interest.
- ~~C.K.~~ If the County ~~manager~~ Administrator or his designee determines that the value of assessment and interest, together with the value of all other liens having priority over the assessment exceeds the value of the property, legal action to foreclose the lien need not be commenced.
- ~~D.L.~~ On payment in full of an assessment and interest, the county shall record a notice of satisfaction of assessment in the office of the County Recorder. The notice shall contain the name of the owner of the property, the tax parcel number, the common street address and the legal description of the subject property. The notice shall refer to the date of the order of assessment and the docket and page number in the office of the County Recorder where such order is recorded.

7.33.055 Cost Recovery for Injunction.

If the county obtains an injunction to compel compliance with Section 7.33.020, the Court shall award attorneys' fees and all costs associated with securing or enforcing the injunction, including

costs of additional inspections, to the county. An award of fees and costs by a court is not appealable to the Board of Supervisors. The Court's order awarding fees and costs may be recorded as an assessment and may be collected in the manner provided for in this Section and A.R.S. § 11-268(E).

7.33.060 Penalties.

A. In addition to the abatement and assessment procedure or injunction provided for by this ~~chapter~~ Chapter, ~~a person is guilty of a petty offense if such person:~~ any person, firm or corporation 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, firm or corporation is guilty of a class 1 misdemeanor.

1. ~~After being noticed of a violation of Section 7.33.020, fails to remove the rubbish, trash, weeds, filth or debris that is the subject of said notice prior to such removal by the county pursuant to an order of abatement issued pursuant to Section 7.33.040; or~~

2. ~~Places any rubbish, trash, filth or debris upon any private or public property now owned or under the control of such person.~~

~~B. In addition to any fine which may be imposed upon a person who violates subsection A.2 of this section, such person is liable for all costs which may be assessed pursuant to this chapter for the removal of the rubbish, trash, filth or debris.~~

~~C.B.~~ The provisions of this section Section are cumulative and do not bar any other enforcement action provided for by law.

7.33.070 Applicability.

The provisions of this ~~chapter~~ Chapter apply to all unincorporated areas of the county.

SECTION 2: If any of the provisions of this Ordinance or the application thereof to any person or circumstance is declared invalid, the invalidity shall not effect other provisions or applications of this Ordinance which can be given effect without the invalid provision or circumstance. To this end, the provisions of this Ordinance are severable.

SECTION 3: This Ordinance shall take effect 31 days from the date of its adoption.

PASSED AND ADOPTED by the Board of Supervisors, Pima County, Arizona,
this _____ day of _____, 2009.

Chairman of the Board of Supervisors

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

REVIEWED BY:

Deputy County Attorney

Ursula Kramer, Director
Department of Environmental Quality