

“EXHIBIT A”

I. INTRODUCTION AND STATEMENT OF PURPOSE

Under A.R.S. § 11-251, the Board of Supervisors has authority to make and enforce all local, police, sanitary and other regulations not in conflict with general law as well as to adopt provisions necessary to preserve the health of the county; and

Uncontrolled accumulations of rubbish, trash, filth, debris, blight, and/or dilapidated structures on private property constitute a public nuisance that negatively affects the beauty, cleanliness, orderliness, public health, safety, and/or the welfare of the community;

Development Services Department is the appropriate primary department to coordinate and enforce an ordinance regarding blight-remediation and removal of hazardous and solid waste. Cochise County had previously attempted to address this problem by way of Ordinance 041-11, which gave power to enforce the blight conditions to Development Services and to the Board of Supervisors. However, Ordinance 041-11 established direct appeal rights to the Board of Supervisors, despite not being required by statute, and furthermore this ordinance did not incorporate several beneficial rights and provisions from the statute.

This Ordinance is intended to repeal and replace the existing hazardous-waste ordinance 041-11 (“**Exhibit B**”), while neither restricting nor limiting the existing authority of other agencies and departments to continue to address such broad and potentially overlapping issues as public health, land use planning and regulation, highway safety or criminal law enforcement; and

It is the purpose of this Ordinance to protect the public by defining and abating such blight conditions in the unincorporated areas of Cochise County. This Ordinance compels property owners and occupants to eliminate public nuisance conditions on their property and provides strong enforcement mechanisms to ensure timely compliance.

This ordinance applies to private property for code compliance purposes including conditions that pose health, safety, welfare, or nuisance concerns. Responsibility for enforcement of hazardous or large-scale solid waste disposal, particularly on public property or involving regulated materials, shall remain under Ordinance 032-03 (“**Exhibit C**”).

This Ordinance is adopted pursuant to and in compliance with Arizona Revised Statutes A.R.S. §11-268 and §11-815. It shall be administered by the Cochise County Development Services Department, through its Code Compliance Division.

The County’s Administrative Hearing Officer system (pursuant to A.R.S. § 11-815) is hereby integrated into the appeal-process of this Ordinance, replacing the Board of Supervisors as an appellate body. All county agencies, including Environmental Health and the Sheriff’s Department, may assist in enforcement as needed.

II. DEFINITIONS

For purposes of this Ordinance, the following terms have the meanings given below (terms capitalized in the text refer to these definitions):

- A. **Abate:** Any corrective action which will completely remedy a violation including removal, elimination, lessening, or remedying any “blight” or “public nuisance” as defined in this ordinance, or other prohibited conduct or status.
- B. **Blight:** A form of public nuisance characterized by any condition on a property in which there is an inappropriate or unsightly accumulation of waste or personal property. Examples of blight include, but are not limited to debris, hazardous waste, environmental contamination, physical deterioration of buildings or structures, vacant, abandoned or dilapidated buildings, building materials, scrap metal or other items, junk, litter, inoperable vehicles, and outside storage that does not comply with zoning ordinances.
- C. **Board:** The Cochise County Board of Supervisors.
- D. **Blight:** A form of public nuisance characterized by any condition on a property in which there is an inappropriate or unsightly accumulation of waste or personal property. Examples of blight include, but are not limited to debris, hazardous waste, environmental contamination, physical deterioration of buildings or structures, vacant, abandoned or dilapidated buildings, building materials, scrap metal or other items, junk, litter, inoperable vehicles, and outside storage that does not comply with zoning ordinances.
- E. **Building:** Any real property structure, whether movable or immovable, permanent or temporary, vacant or occupied, used (or customarily used) for human lodging or business purposes, or in which livestock, produce, personal or business property are kept or stored.
- F. **County:** Cochise County, specifically the unincorporated areas within Cochise County’s jurisdiction.
- G. **Debris:** Trash, rubbish, scattered wood or materials, junk or scrap, inoperable or derelict vehicles, vehicle parts, derelict appliances, dilapidated or dismantled manufactured homes or mobile homes, recreational vehicles in excess of the number allowed or otherwise in violation of zoning ordinances, or similar discarded items. This term includes any accumulation of filth or refuse of any kind.
- H. **Dilapidated Building:** Any building or structure that is in such disrepair or is damaged to such an extent that it is likely to burn or collapse, and/or the condition endangers or negatively affects in any way the health, safety, and/or welfare of the public, and/or the condition is a zoning-violation. Development Services does not condemn a building, but it

can identify a building as dilapidated, in violation of this ordinance, and in need of repair or removal.

- I. **Hearing Officer:** The Cochise County Administrative Hearing Officer authorized under A.R.S. § 11-815. The Hearing Officer is appointed by the Board to conduct hearings on zoning and code violations, make findings, and issue orders and civil penalties. The Hearing Officer for Cochise County has jurisdiction to hear and decide cases arising under this Ordinance as provided herein.
- J. **Interest in the Property:** Any reference to people who have an “interest in the property” includes owners, lienholders, lessees, occupants, and squatters, as well as any other person who is exercising any form of dominion, control, residence, title, benefit, or other similar interest regarding the property, whether their interest is legal or illegal.
- K. **Lawful Vantage Point:** A location from which a person may lawfully observe a property without trespass and without the use of elevated or enhanced observation methods. A lawful vantage point includes:
 - 1. Public rights-of-way or areas open to public use; and
 - 2. Private property where the owner or lawful occupant has granted consent to enter.

A lawful vantage point does not include aerial observation, unmanned aerial systems, ladders, rooftops, vehicles positioned for elevation, zoom lenses, binoculars, or any other device or method intended to obtain a view not available from normal ground-level human vision.

- L. **Lessee:** A person with a legal right to possess Real Property by agreement (such as a lease or rental agreement). This includes month-to-month tenants or any person occupying property under a lease or rental arrangement.
- M. **Occupant:** A person who has actual use, possession or control of Real Property, whether or not that person has ownership or any legal interest in the property. (For example, a squatter or other unauthorized occupant is considered an “Occupant” for purposes of this Ordinance.) An Occupant includes anyone using the property, except public utilities or government entities maintaining rights-of-way. Occupant does not include U.S. government right-of-way holders, nor does it include state or federal landowners.
- N. **Owner:** A person or entity holding legal or equitable title to Real Property, as shown in the County Recorder’s records. This includes an individual or entity buying a property under a recorded contract for deed or similar instrument. (Owner does not include the United States, the State of Arizona, or their political subdivisions in possession of the property.)

- O. **Person:** An individual, partnership, company, corporation, limited liability company, trust, estate, association, or any other legal entity capable of owning or occupying property.
- P. **Public Nuisance (aka “nuisance”):** For purposes of this Ordinance, Public Nuisance (or simply “Nuisance”) means any violation of a zoning-ordinance and/or any of the following: any “blight” on the property; any conditions that promote disease, harbor vermin or insects, attract rodents or wild animals, or otherwise create an unsanitary or dangerous conditions; any attractive nuisance that may endanger children; any condition that creates a fire-hazard; and any other condition on the property that endangers or negatively affects the beauty, cleanliness, orderliness, public health, safety, and/or the welfare of the community. Determinations of a Public Nuisance condition can be made by and are in the discretion of the County’s enforcement officials such as Code Compliance Officers, Environmental Health Officers, Fire District Officials, Law-Enforcement, or Building Officials.
- Q. **Real Property:** Lands and premises in Cochise County, including buildings or other structures thereon, and any grounds, lots, or parcels of land. Real Property also includes any contiguous sidewalks, streets or alleys that are adjacent to a lot or parcel and are publicly accessible to the extent that the ordinance regulates maintenance, safety, or activity within those areas.
- R. **Zoning Inspector:** The Cochise County Zoning Inspector (or designee), who is the official charged with enforcement of the County’s zoning ordinances pursuant to A.R.S. § 11-815. For purposes of this Ordinance, “Zoning Inspector” also includes any authorized Code Compliance Officer in the Development Services Department with authority to enforce this Ordinance.

III. VIOLATIONS AND RESPONSIBILITIES

- A. **Public Nuisance Prohibited (Duty to Maintain Property):** No Owner, Lessee, or Occupant of any Real Property shall cause or permit any Public Nuisance condition to exist on that property. All buildings, grounds, lots and premises shall be maintained free of accumulations of blight, dilapidated structures, or any other condition that constitutes a Public Nuisance, as defined in this ordinance. This duty extends to keeping any contiguous sidewalks, streets, or alleys abutting the property free of such hazards.
- B. **Joint and Several Responsibility:** Owners, Lessees, Occupants, Squatters, and any persons in possession or control of Real Property are jointly and severally responsible for keeping the property free of Public Nuisances and for complying with this Ordinance. In other words, any or all such parties may be held liable for a violation, and the County may proceed against one or more of them as needed to abate or enjoin the nuisance. If a property is leased, both the property Owner (landlord) and the Lessee or Occupant (tenant) are legally responsible for abating any Public Nuisance on the premises, notwithstanding any private lease terms to the contrary. No contract or agreement can

relieve an Owner, Lessee or Occupant of the obligations imposed by this Ordinance. Also responsible are any squatters or others living on the property, either with or without a lease or legal right to reside there.

- C. **Notice to Abate; Time to Comply:** It is the duty of every Owner, Lessee or Occupant to promptly abate any nuisance on their property upon receiving a Notice to Abate from the County. The responsible parties shall have not less than thirty (30) calendar days from the service of a Notice to Abate the violation. During that time, the Owner, Lessee or Occupant is expected to take all necessary actions to eliminate the hazardous conditions. All blight, rubbish, trash, filthy, debris or other public nuisance removed shall be disposed of in a lawful manner, such as at an approved waste disposal facility or transfer station. If a dilapidated building is the cause of the nuisance, the Owner or Occupant must demolish and remove it or, where feasible, repair the structure to eliminate the dilapidated conditions, in compliance with all applicable permits and regulations for demolition.

IV. JUDICIAL ENFORCEMENT AND INSPECTIONS

- A. **Code Compliance Officer:** The Cochise County Development Services Department is charged with primary enforcement of this Ordinance. The County Zoning Inspector, and his or her designees (including Code Compliance Officers), shall act as the Code Compliance Officer(s) to investigate potential violations, issue notices, and carry out abatement actions as authorized herein. These officers are empowered to enter upon public or private property at reasonable times to inspect for compliance, provided that they shall not enter any building or secured area of private property without the verbal consent of a lawful Occupant or Owner, unless a warrant or court order is obtained. If entry is refused or is unable to be obtained, the Code Compliance Officer may request an inspection warrant from a court of competent jurisdiction (for example, a Justice of the Peace) to authorize entry onto the property to investigate and to abate alleged violations, pursuant to A.R.S. §§ 11-268 and 11-815. The Civil Attorney's Office will assist with securing a warrant. County officers may also document conditions visible from a lawful vantage point, and may use photographs, affidavits, or witness testimony to establish the existence of a violation.
- B. **Administrative Hearing Officer:** The Cochise County Hearing Officer system is established pursuant to A.R.S. § 11-815 to provide an efficient administrative remedy for zoning violations. By adopting this Ordinance, the Board designates the Hearing Officer as the appeal tribunal for a Respondent who contests the Notice to Abate which they received. In addition, in the sole discretion of the County, consistent with this ordinance, the County may choose to initiate an Administrative Hearing Process if it desires an Administrative Order for any enforcement-purpose, including to be used as probable-cause evidence to support the issuance of a Warrant for Entry. At such hearings, the Hearing Officer shall adjudicate the claims of both parties, and may impose orders, civil penalties, and other relief as provided herein. The Hearing Officer may conduct hearings and may issue written Findings of Fact, Conclusions, and an Order to Abate and/or civil penalties. The Hearing

Officer's order may also direct the County to record any unpaid civil penalties as liens on the property in accordance with applicable law. The Hearing Officer's powers and procedures are further described in Section V below. Notwithstanding the County's right to initiate administrative hearings, the County may choose to enforce this Ordinance without Administrative Order, either via its statutory powers obtained after sending a Notice to Abate, with no appeal taken, or via direct Petition to the Superior Court.

V. NOTICE TO ABATE AND APPEAL PROCEDURE

- A. Notice to Abate – Contents and Service:** When the Code Compliance Officer has reasonable cause to believe that a Public Nuisance in violation of this Ordinance exists, the Officer shall issue a Notice to Abate to the Owner, Lessee, and/or Occupant of the property. The Notice to Abate shall provide the responsible parties with written notice of the violation and a deadline for voluntary compliance. The Notice must include, at minimum:
1. **Identification of Property:** The address or legal description of the property sufficient for identification (including the Tax Parcel number).
 2. **Description of Violation:** A statement describing the conditions constituting the alleged Public Nuisance (e.g. accumulation of trash, dilapidated structure, etc.); identification of the specific zoning rules violated and/or a statement that these conditions constitute a threat to public safety, health, and/or welfare; and make reference to this ordinance number and its date within the notice.
 3. **Required Corrective Action:** A statement directing the Owner/Occupant/Lessee/Lienholder to remove, repair, demolish, or otherwise abate the described nuisance conditions. If dilapidated buildings are involved, the notice may direct removal or specific repairs necessary to eliminate the hazard (and advise that proper permits must be obtained for any building repair or demolition). If rubbish, trash, etc. are involved, the notice shall direct that all such matter shall be removed in a legal manner.
 4. **Deadline for Compliance:** The date by which the nuisance must be abated. By law, this compliance deadline shall be no less than thirty (30) calendar days from the date of service of the Notice. The Notice shall specify the exact date and time when compliance is required.
 5. **County Abatement if Not Corrected:** A warning that if the responsible party does not voluntarily abate the nuisance by the deadline, the County is authorized to abate the condition without further Administrative Hearing or Superior Court order and may charge all costs of removal to the Owner, Lessee, and/or Occupant of the property, jointly and severally. County officers may request an inspection or abatement warrant under A.R.S. §§ 11-268 and 11-815 before entering private property without consent.

The notice shall include an estimate or a maximum amount (i.e. “no more than \$_____”) of the cost the County would incur to remove or abate the nuisance if the owner fails to do so. This cost estimate (or maximum amount) may be based on a qualified contractor’s bid or the enforcing department’s own cost-calculation and is provided for informational purposes (actual costs will be assessed after abatement).

6. **Appeal Rights:** A statement that the recipient of the Notice has the right to appeal the Notice within fifteen (15) calendar days after its service/receipt. The Notice shall explain the procedure for filing an appeal and state that failure to appeal within fifteen (15) calendar days waives all rights to an administrative hearing or other appeal on the matter.
7. **Contact Information:** Contact information for the issuing department or officer, so the recipient may ask questions, request an extension, or provide evidence of compliance. The notice should also encourage the recipient to contact the County if they require more time or have a plan to remedy the issue, as voluntary compliance is preferred. The County may grant reasonable extension to comply with abatement deadlines in cases of financial hardship, disability, or extraordinary circumstances, upon written request.
8. **Statement of Consequences:** The Notice may include additional statements as required or deemed appropriate by the County, such as: (a) that the County may record a lien against the property for the costs of abatement and fees, in accordance with the law, if the County must perform the cleanup; (b) that the County may, with assistance of the Civil Attorney’s Office, file a suit in Superior Court to foreclose on the property, if permitted by law, to recover the costs of abatement and fees; and (c) that the Respondent may also be subject to criminal charges and a ticket for ordinance-violations.

The Notice to Abate shall be served on the Owner, Occupant, and/or Lessee by either names (if known) or titles (e.g. “Owner, “All Occupants,” etc.), via personal service or certified mail. If the Owner’s address differs from the site address, a duplicate Notice shall be sent to the Owner’s last known address as shown on the property tax records. A copy of the Notice shall also be sent to any known lienholder of record for the property (such as a mortgage lender). In all cases, the Code Compliance Officer or designee (e.g. Constable) shall also post a copy of the Notice in a conspicuous place on the property (for example, affixed to the front door or gate) to ensure the Occupants are aware of the suspected public nuisance. The date of mailing, personal delivery, or posting (whichever is latest) shall be considered the date of service for purposes of compliance deadlines and appeal periods.

- B. **Appeal of Notice – Hearing Officer Procedure:** Any recipient of a Notice to Abate who disputes the existence of a Public Nuisance, or believes they are not responsible, or otherwise contests the Notice, may appeal the Notice to the County’s Hearing Officer.

The appeal must be in writing, an appeal-fee as specified in the Development Services Fee Schedule must be included, and the appeal must be filed within fifteen (15) calendar days after the Notice was served. Date of service shall be the later of service by personal service (if obtainable); date received by Certified Mail (if deliverable and signed for); and/or date of posting on the property.

The written appeal (often called a “Notice of Appeal”) shall be filed with the Development Services Department and should state, in reasonable detail, the grounds for the appeal – for example, why the appellant believes a violation does not exist, or why they should not be required to comply. The filing of a timely appeal pauses the abatement deadline in the Notice until the appeal is decided. If no appeal is filed within fifteen (15) calendar days, the Notice to Abate becomes a final administrative order and is not subject to further challenge or further proceedings (either Administrative Hearing or Superior Court proceedings). The County may proceed with abatement and lien after the deadline for appeal has passed.

Upon receiving a complete and valid appeal, the Hearing Officer shall schedule an administrative hearing to review the Notice. The hearing should be set as soon as reasonably practicable, allowing time for at least fifteen (15) calendar days of notice to the appellant of the hearing date. Hearings may be scheduled during a regular by-monthly or other schedule for Administrative Hearings. The Development Services Department (or other department that initiated the Notice) shall appear at the hearing to present evidence of the alleged violation (e.g. testimony of the inspector, photographs, reports). The appellant may appear in person, or through a representative, to present testimony, evidence, and argument why the Notice is erroneous or should be modified. The hearing shall be conducted informally – strict rules of evidence and procedure need not apply – but it shall be recorded or minutes kept. Both sides may present documents or witnesses. The Hearing Officer shall consider the evidence and determine whether a Public Nuisance in violation of this Ordinance exists(ed), and whether the requirements of the Notice (abatement actions and deadline) are reasonable under the circumstances.

After the hearing, the Hearing Officer shall issue a written decision containing Findings of Fact and Conclusions. The decision may affirm, modify, or dismiss the Notice to Abate.

If the Hearing Officer affirms (with or without modifications) the Notice to Abate (i.e. denies the appeal), the appellant is given until the deadline set by the Hearing Officer to comply. The decision shall specify the required abatement actions, or any required enjoyment actions, and may specify a new compliance deadline for the Owner/Occupant to perform the abatement-action taking into account the time already elapsed during the appeal. Within the Administrative Order, the Administrative Hearing Officer may also order the following: daily civil fines and penalties until the violator complies; that the county may abate the violations, assess costs, and record a lien against the property without further action; that the county may seek a warrant or order from any Judge to

enter the property for inspections and/or abatement; and that the County may seek foreclosure of the property with the Civil Attorney's Office and the Superior Court.

If the Hearing Officer dismisses the Notice to Abate, no further action by the Owner/Occupant is necessary, and the County may not proceed with further actions under the current Notice to Abate. This section does not prohibit the County from issuing new Notices to Abate in the future, should conditions change.

The Hearing Officer's decision shall be served on the appellant and filed with the Department. This decision shall constitute a final Administrative Order regarding the Notice to Abate.

- C. **Appeal of Hearing Officer Decision:** The Hearing Officer's decision on the appeal of a Notice to Abate is the County's final administrative decision on the matter. An aggrieved party (typically, the property owner or person responsible) who participated in the hearing may seek judicial review of the Hearing Officer's decision by filing an original action in the Cochise County Superior Court. Pursuant to A.R.S. § 11-815, such an appeal shall be filed as a special action or complaint within thirty (30) calendar days after the Hearing Officer's decision is rendered. The filing of a judicial appeal does not automatically stay (pause) the Hearing Officer's order, but the appellant may petition the court for a stay. If no timely petition to the court is filed, the Hearing Officer's order is final and may be enforced.

VI. ABATEMENT BY COUNTY; COST RECOVERY

- A. **County Abatement Authorized:** If a Public Nuisance is not fully abated by the Owner, Lessee, Occupant or any other person with an interest in the property, within the time specified in the Notice to Abate (or by the deadline granted in writing by the Hearing Officer if appealed or if the County initiates an administrative action), the County is authorized to abate the nuisance, to assess costs against those with an interest in the property, and to record a lien on the property for such costs in accordance with law. To take these actions, the County is **not** required to pursue an Administrative or Judicial Hearing process of any kind, other than to obtain a warrant for entry and abatement of the nuisance, if permission to do so is not obtained from the owner/occupant (see section VI. B. below).

Abatement may include removal of blight, rubbish, trash, junk, debris, and/or any other Public Nuisance on the property, as specified in the Notice to Abate. The County must abate the nuisance within one-hundred-eighty (180) calendar days after the right to abate has accrued, unless an extension is given by the Administrative Hearing Officer (after appeal or County-initiated administrative action) or by Superior court order. The County may contract with private companies in accordance with applicable law or use its own personnel and equipment to perform the abatement. It is preferred that the responsible Owner or Occupant undertake the cleanup; County abatement is a remedy of last resort

when voluntary compliance fails. Costs of abatement may be assessed against the property owner and recorded as a lien in accordance with law.

- B. **Warrant for Entry:** In effectuating an abatement, the County Officers and contractors shall attempt to obtain permission to enter the property from an Owner or Occupant. If entry is refused or not obtained, the County may apply for an abatement warrant or other court order authorizing entry, pursuant to A.R.S. §§ 11-268 and 11-815. A Justice of the Peace or other court of jurisdiction may issue such a warrant or order. Once lawfully on the premises, the County may take all reasonable actions to abate the nuisance as described in the Notice (for example, removing trash, or demolishing unsafe structures).
- C. **Assessment of Costs:** After the County (or its contractors) abates the nuisance, the County shall compile an itemized report of the actual costs of abatement. This includes the costs of any contractors or County staff time, equipment and materials, landfill tipping fees, and any additional inspection, notice, or incidental costs associated with the enforcement action. The Code Compliance Officer shall then prepare a proposed Assessment of the abatement costs to be charged against the property. The Assessment may include an administrative fee or surcharge to cover the County's costs of administering the abatement. However, the total assessment shall not exceed the reasonable actual costs incurred and in no event more than the cost estimate provided in the Notice (unless the scope of work had to be increased due to unforeseen conditions). The form of the Assessment (itemized statement of costs) shall be submitted to the Development Services staff for approval. If the amount of the assessment is more than \$5,000.00, the Development Services staff shall submit the assessment to the Board of Supervisors for approval. Upon approval, the staff member (or Board Chair) shall sign the Assessment, and the Assessment shall be served on the responsible parties (Owner, Occupant, Lessee, and any lienholder of record) in the same manner as provided for the Notice to Abate , and the County may record the Assessment as a lien on the property in accordance with law.
- D. **Appeal of Assessment:** The Owner or any party liable for the costs may appeal the Assessment amount by filing a written appeal, along with applicable appeal-fee, with the Hearing Officer within fifteen (15) calendar days of service of the Assessment notice. Such an appeal may contest whether the costs were excessive, unreasonable, or improperly calculated. The Hearing Officer shall hold a hearing, after giving notice to the appellant, in a manner similar to the appeal of a Notice to Abate. At the hearing, the County shall present evidence of the costs incurred and the justification for each cost. The appellant may present evidence as to why certain costs should be reduced or eliminated (e.g. work done was beyond what was required, or costs not actually incurred). The Hearing Officer shall then issue a decision affirming or adjusting the Assessment. If the appellant seeks further review of the Assessment, they may file a written request for discretionary review by the Board of Supervisors within fifteen (15) calendar days, along with the appropriate fees for appeal (per the current County fee schedule). If no such request is filed and/or if

the appeal-fee is not paid, the Hearing Officer's decision is final, and the lien may be recorded administratively.

- E. **Lien and Collection:** Once the Assessment is final (either no appeal was filed within the timeframe allowed by this ordinance, or after the Hearing Officer's decision on a complete and timely appeal), the Code Compliance Officer or its delegate shall notify all Respondents a "Notice of Pending Lien," served in the same way as other Notices in this Ordinance, giving the Respondents thirty (30) calendar days to pay for all abatement costs, or else a lien will be recorded.

If not paid within thirty (30) calendar days, the Code Compliance Officer or its delegate shall record the Assessment in the County Recorder's Office, thereby imposing a lien on the property. The Assessment Lien shall include the name of the property owner(s), amount of the assessment, and a legal description of the property, and it shall prioritize as a lien from the date of recording. Pursuant to A.R.S. § 11-268(D), any such assessment recorded after August 6, 1999 is prior and superior to all other liens, obligations, or encumbrances on the property except for general property taxes and prior-recorded mortgages. In other words, the County's lien for abatement costs will take precedence over other liens (such as subsequent judgments or deeds of trust) and will remain until paid. The assessment lien shall accrue interest at the statutory rate for civil judgments until paid. The property Owner is liable for the full amount of the Assessment. The Assessment may be paid in full at any time. Upon receipt of full payment, the Code Compliance Officer or its delegate shall record a Satisfaction of Lien in the Cochise County Recorder's Office, thereby releasing the lien from the property. If not paid, it will run with the land and may be satisfied upon sale or foreclosure of the property and shall remain attached to the property until a Satisfaction of Lien is recorded.

- F. **Multiple or Repeat Assessments:** Imposition of one assessment does not prevent the County from recording additional assessments on the same property for separate or continued violations; any number of liens may be recorded, and they may be enforced together or separately.
- G. **Foreclosure of Lien:** If the Assessment lien is not paid within the time allowed following the Notice of Pending Lien, the County may initiate legal action to enforce the lien and foreclose on the property, at the discretion of the Civil Attorney's Office and/or Board of Supervisors. The County may file a civil lawsuit in Superior Court seeking a judgment foreclosing the lien (after the thirty (30) day payment period has lapsed following the Notice of Pending Lien). Upon obtaining a judgment, the property may be sold via judicial foreclosure at a Sheriff's sale, similar to the case of foreclosures of mortgages. Any sale of the property to satisfy an assessment lien shall be made only pursuant to a judgment of foreclosure and order of sale by the court. The proceeds of any such sale shall be applied to pay the assessment and the costs of foreclosure, with any remainder distributed as provided by law. The recorded Assessment (and any Hearing Officer's or Board's

proceedings relating thereto) shall be prima facie evidence of the validity of the lien and the regularity of all proceedings in the case.

- H. **Additional Remedies for Cost Recovery:** In addition to recording a lien, the County may pursue any other legal remedy to recover the costs of abatement from the responsible parties. This may include instituting a civil action against the Owner or Occupant for debt or nuisance abatement costs, seeking a personal judgment for the amount owed. The County may also refer the debt to collections or offset the amount against any County refunds due to the responsible person, as allowed by law. All such costs, once collected, shall be used to reimburse the County's expenses and, where mandated, deposited into appropriate funds (for example, illegal dumping fines used for cleanup per A.R.S. § 11-268(A)(3)).

VII. CIVIL AND CRIMINAL PENALTIES

- A. **Misdemeanor Offenses:** In addition to the abatement process described above, any person or entity who violates any provision of this Ordinance may be charged with a criminal misdemeanor. Unless otherwise specified herein, a violation of this Ordinance is a Class 2 misdemeanor under Arizona law. Each day that a violation continues after notice and beyond the deadline for compliance constitutes a separate offense. Upon conviction, a Class 2 misdemeanor is punishable by jail time and/or fines, as provided by law. The Court may also order the defendant to abate the nuisance and pay restitution or cleanup costs. Alternatively, or additionally, a violator may be cited into a Justice Court through the issuance of a complaint by the Code Compliance Officer or by any peace officer with jurisdiction, as with any other misdemeanor. Nothing in this Ordinance shall prevent the County from seeking criminal prosecution for willful, hazardous, or repeated violations.
- B. **Illegal Dumping (Criminal Penalty):** Any person, firm, or corporation that is observed or discovered to have recklessly placed, dumped, or deposited rubbish, trash, filth or debris on any private or public property not owned or controlled by that person (without permission of the owner) is guilty of a Class 1 misdemeanor. This includes illegal dumping of garbage or construction debris on someone else's land, in washes, on roadsides, or in the desert. If convicted under this provision (which mirrors A.R.S. § 11-268(A)(3)), the offender may be sentenced up to 6 months in jail and fined up to \$2,500. One hundred percent (100%) of any fine assessed for such offense shall be deposited in the County's general fund, and at least 50% of the fine must be used by the County for illegal dumping cleanup efforts, as mandated by statute. In addition to any criminal fine, the court shall order the offender to pay all cleanup and abatement costs incurred in removing the dumped materials (or to perform cleanup work in kind). Each act of illegal dumping, and each day of continued failure to remove the dumped material, constitutes a separate offense. If the dumped material is not immediately removed by the offender, the violation can be charged under this section.

- C. **Civil Penalties (Administrative):** As an alternative to criminal prosecution, violations of this Ordinance and the seeking of civil monetary penalties may be addressed through civil enforcement before the Hearing Officer. A proceeding before the Hearing Officer may occur in one of two ways: either via the process to Appeal a Notice to Abate, described elsewhere in this Ordinance; or via a Hearing initiated by the County, in its sole discretion, for any enforcement-purpose, including to assess civil penalties. Once a proceeding is held by a Hearing Officer, the violation of any provision of this Ordinance is deemed a “civil violation” or civil offense. At the conclusion of that hearing, the Hearing Officer is authorized to impose civil monetary penalties for such violations, in addition to or in lieu of orders to abate. The maximum civil penalty for any single violation shall not exceed the equivalent of the maximum fine for a Class 2 misdemeanor offense. A “single violation” is each day a violation remains uncorrected and is subject to additional daily penalties. The Hearing Officer, in his or her discretion, may suspend or reduce a civil penalty if a violator demonstrates good faith efforts to comply or other mitigating circumstances. Civil penalties may also be imposed in a stipulated amount that will accrue if the violator fails to meet certain compliance deadlines. All penalties assessed by the Hearing Officer shall be set forth in a written administrative order. If the penalty is not paid, the County may collect it as a civil judgment or may record the amount as a lien against the property (separate from any abatement cost lien) to the extent allowed by law.
- D. **Classification of Penalties as Civil:** Notwithstanding that certain violations of this Ordinance are designated as misdemeanors for criminal charging purposes, all fines, fees, penalties, and abatement costs imposed under this Ordinance are hereby deemed civil penalties for purposes of enforcement and administration. It is the intent of the County that the financial obligations resulting from enforcement of this Ordinance be enforceable in the same manner as civil judgments or debts. Declaring these amounts to be civil in nature also ensures they do not constitute criminal fines for purposes of state law limitations or triggering of additional penalties. In short, all monetary assessments (fines and costs) under this Ordinance shall be treated as civil obligations of the responsible party. This provision in no way limits the County’s ability to pursue criminal charges; it merely clarifies the nature of the financial remedies.

VIII. ADDITIONAL REMEDIES; NON-EXCLUSIVE ENFORCEMENT

- A. **Additional Remedies:** The remedies and enforcement powers provided by this Ordinance are cumulative and in addition to any others provided by Arizona law. The County may pursue any lawful remedy or course of action to ensure abatement of nuisances and blight, and nothing in this Ordinance shall be construed to limit or preclude other lawful enforcement mechanisms. In particular, the Board of Supervisors or the County Attorney (or any person specifically authorized by law) may institute appropriate legal actions in Superior Court to prevent, restrain, abate, or enjoin any violation of this Ordinance. Such judicial proceedings may include suits for injunctive relief, mandamus (to compel action), or other orders required to abate the nuisance or compel compliance. The County may also pursue an action for abatement in court, wherein the court may order the defendant

to abate the nuisance by a certain date or authorize the County to do so. In cases of imminent threat to life, safety or health, the County may coordinate with public health or safety officials to summarily abate the hazard under other applicable laws (emergency health statutes, fire code, etc.), and later assess costs as provided herein.

Furthermore, this Ordinance shall not be interpreted as limiting the application of any state laws or other county ordinances. If a particular set of facts violates both this Ordinance and a state statute (for example, criminal littering, illegal burning, or vector control laws), the County or other authorities may choose to prosecute under the statute in addition to or instead of under this Ordinance. A.R.S. § 11-268 specifically provides that county nuisance abatement ordinances do not limit the power of the state to prosecute for any offense. Likewise, compliance with this Ordinance does not relieve any person from complying with other applicable laws governing health, safety, building, zoning, and environmental standards.

- B. **No Exclusivity:** The use of one enforcement tool by the County (such as issuing a Notice to Abate and lien) does not preclude the County from using other tools (such as criminal charges or an injunction) to address the same violation, especially if the violation persists. However, the County's policy is to seek voluntary compliance first, resorting to penalties and court action only when necessary to abate the nuisance.
- C. **ARS References:** This Ordinance is intended to implement and be consistent with A.R.S. § 11-268 and A.R.S. § 11-815. In the event of any conflict, the provisions of those statutes (as amended) shall control. A.R.S. § 11-815(H) explicitly authorizes the County's Board of Supervisors or County Attorney (among others) to undertake actions in court such as injunction, abatement, or other appropriate relief to enforce zoning regulations – which include this blight abatement ordinance as a part of the County's enforcement of health and safety standards on property. Additionally, A.R.S. § 11-268 is the enabling authority for this Ordinance and provides definitions and procedures that are incorporated herein by reference (even if not explicitly repeated). This Ordinance shall be liberally construed to effectuate its purpose of protecting public health and safety through the abatement of nuisances and blight.
- D. **Severability:** If any section, subsection, sentence, clause, phrase or provision of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors declares that it would have passed this Ordinance and each section, subsection, clause, phrase and provision thereof, irrespective of the fact that any one or more portions may be declared invalid.
- E. **Effective Date:** This Ordinance shall take effect _____ (thirty (30) calendar days after adoption, unless a later date is specified by the Board). It shall apply to all Public Nuisance conditions existing on or after its effective date, regardless of when such conditions first

arose. Existing ongoing violations shall not be grandfathered and are subject to enforcement under this Ordinance after its effective date.

- F. **Ordinance Superseded:** Upon adoption, this Ordinance supersedes, repeals, and renames Ordinance 041-11 and any amendments thereto are repealed only insofar as they provided an enforcement scheme for property blight and dumping that is now replaced by this Ordinance. This Ordinance may be referred to as the “Cochise County Anti-Blight and Public Nuisance Abatement Ordinance” and may be codified in the County Code as appropriate for enforcement by Development Services and the Hearing Officer in zoning-related blight cases.