

ORDINANCE O-06-20

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE,
COUNTY OF COCHISE, STATE OF ARIZONA, AMENDING THE BISBEE
CITY CODE BY THE ADDITION OF A REVISED ARTICLE 9.4, REMOVAL OF
LITTER, JUNK AND DILAPIDATED BUILDINGS, AND PROVIDING FOR
REPEAL AND SEVERABILITY**

WHEREAS, the Mayor and Council of the City of Bisbee have the authority to adopt and amend provisions of the City Code by ordinance, as authorized by the City Charter, Section 7.05(b); and

WHEREAS, applicable State law, as codified at A.R.S. § 9-499, directs the governing body of each town in this State to adopt by ordinance certain rules to compel the removal of rubbish, trash, weeds, accumulations of debris and dilapidated buildings which constitute a hazard to public health and safety; and

WHEREAS, this State law specifies the manner in which these rules are to be enforced, including provisions for notice, hearings, abatement actions and liens on the subject property; and

WHEREAS, it would be in the best interests of this City and of the citizens of this community for the City to amend its current Code provisions so that they are consistent with applicable State law, provide for due process of law for all interested parties, and are compatible with other regulations of this City,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, THAT THE BISBEE CITY CODE IS HEREBY AMENDED BY THE ADDITION OF THIS REVISED ARTICLE 9.4, REMOVAL OF LITTER, JUNK AND DILAPIDATED BUILDINGS, AS FOLLOWS:

[-] = Deleted Language

__ = New Language

ARTICLE 9.4. REMOVAL OF LITTER, JUNK AND DILAPIDATED BUILDINGS

9.4.1. Definitions

In this article, unless the context otherwise requires:

- A. "Litter" and "junk" means any rubbish, trash, weeds, filth or debris which constitute a hazard to public health and safety and shall include all putrescible and non-putrescible solid wastes including garbage, trash, ashes, street cleanings, dead

animals and solid market and industrial waste; batteries; any deposit, accumulation, pile or heap of brush, grass, debris, or weeds other than compost piles; cans, cloth, paper, wood, rubbish or other unsightly or unsanitary matter of any kind whatsoever; and any growth of weeds, brush, grass or other vegetable growth to a height of over six inches, (or over twelve inches during the growing season), other than in maintained gardens or landscaping or in native desert conditions.

- B. "Private premises" means any dwelling, house, building or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps or vestibules belonging or appurtenant to such dwelling, house, building or other structures.
- C. "Public place" means any and all streets, sidewalks, boulevards, alleys or other public ways, and any and all public parks, squares, spaces, grounds and buildings.
- D. "Dilapidated building" means any building or structure that has any or all of the conditions or defects described in paragraphs 4 through 18 of Section 302- "Dangerous Building" of the Uniform Code for the Abatement of Dangerous Buildings, 1997 edition, as previously adopted by the City of Bisbee.

9.4.2. Littering and Maintaining Junk

No person shall throw or deposit litter or junk on any public place or [~~occupied or unoccupied~~] private premises owned by another person within the City, [~~whether owned by such person or not~~] except that the owner or person in control of private premises may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any public place. No person shall maintain litter or junk on any public or private property except as authorized in connection with the operation of a lawful junkyard, waste transfer station, recycling operation, or similar licensed business or except as expressly allowed under the City of Bisbee Zoning Regulations and provided that all such materials are maintained in a manner that does not constitute a hazard to public health and safety.

9.4.3. Owner to Maintain Premises

The owner and the [~~or~~] person in control of any private premises shall at all times maintain the premises free of litter and junk, except as expressly allowed herein. The owner or manager of the property shall remove any dilapidated buildings or structures from any private property.

9.4.4. Violation and Penalty (O-01-06)

A. [General

~~Any person, firm or corporation whether as principal, owner, agent, tenant or otherwise who violates, disobeys, omits or refuses to comply with, or who resists the enforcement of any of the provisions of the Ordinance shall receive a written notice citing the specific violation and a copy of the applicable code sections. Such party is given 30 days to correct the violation. The written notice includes provisions for appeal to the Council within 10 days of receipt of the notice. The written notice also includes notice of a fine not to exceed \$750 to be levied in 30 days if the violation continues.]~~

Prior to any enforcement action under this Article, written notice of any violation shall be provided to the owner, the owner's authorized agent or the owner's statutory agent and to the occupant or lessee by the Code Enforcement Officer. The notice shall be served either by personal service or by certified mail. If notice is served by certified mail, the notice shall be mailed to the last known address of the owner, the owner's authorized agent or the owner's statutory agent and to the address to which the tax bill for the property was last mailed. The notice shall be given not less than thirty (30) days before the day set for compliance and shall include the legal description of the property and the estimated cost of such removal to the city or town if the owner, occupant or lessee does not comply. The owner shall be given not less than thirty (30) days to comply. The city or town may record the notice in the county recorder's office in the county in which the property is located. If the notice is recorded and compliance with the notice is subsequently satisfied, the city or town shall record a release of the notice.

B. [Injunction

~~1. If an appeal is made to Council, the decision of the Code Enforcement Officer and Planning and Zoning Director may be affirmed, reversed or modified. The Council may direct staff at this time to clean up the property if the violation involves removal of outdoor storage material or abandoned or junk vehicles. The clean up cost, submitted to Council at the time of the appeal, will include a "reasonable fee" for inspection and will be turned over to the Finance Department for collection after the removal is completed.~~

~~2. If the violation continues 30 days or more from the issuance of the original citation and no appeal is made to the Council, the Code Enforcement Officer issues a notice of fine and the fine is turned over to the Finance Department for collection.~~

~~3. Any use of property contrary to the provisions of this Ordinance shall be declared to be unlawful and a public nuisance. The Code Enforcement Officer,~~

~~under direction of the Planning and Zoning Director, and the Finance Director shall:~~

- ~~a. immediately commence all necessary actions or proceedings for the abatement, injunction and removal of the violation in the manner provided by law;~~
- ~~b. take such other lawful steps as is necessary, and;~~
- ~~c. take whatever court action as is necessary to abate, enjoin and remove the violation and restrain and enjoin any person, firm or corporation from setting up, erecting, building, moving or maintaining any violation or using any property contrary to the provisions of this Ordinance.]~~

The recipient of any such notice shall have the right to appeal the notice of violation to the Board of Adjustment of the City of Bisbee within fifteen (15) days of the date of receipt of the notice. A notice of appeal shall be delivered to the Code Enforcement Office in writing. The Board of Adjustment, at a duly noticed hearing on any such appeal, shall have the authority to affirm, reverse or modify any issue that is brought to it for review. If the recipient of any such notice does not file a timely notice of appeal, the notice of violation shall constitute a final administrative determination of all issues included within the notice of violation.

- C. Any person who fails to remove any litter, junk or dilapidated buildings as required in any final notice of violation is guilty of a violation of this Article. Any such violation may be prosecuted as a civil violation under the City Code and any responsible party shall be subject to a civil penalty of five hundred dollars (\$500.00). In addition to any fine or penalty that may be imposed, the responsible party may be subject to an injunction or an abatement order and shall also be liable for all costs which may be assessed pursuant to the Article for removing, abating or enjoining any such violation.
- D. If a person fails to remove any litter, junk or dilapidated buildings, after notice as required above, and fails to abate the condition that constitutes a hazard to public health and safety, as required in any final notice of violation, the City, its officers, agents or contractors, may remove, abate, or cause their removal without further notice.
- E. If the City performs any such action to abate or cause the removal of litter, junk or dilapidated buildings, the City may assess the subject property for the actual costs of the removal or abatement, including the actual costs of any additional inspection and other incidental connected costs, including all legal costs. Prior to assessing any such costs against the subject property, the City shall provide the owner and any other party with an interest in the property with a written notice of the proposed amount of the assessment. This notice shall also include notice of the right to appeal this determination. The owner or other interested party shall

have the right to appeal the amount of the assessment to the Board of Adjustment within fifteen (15) days of the date of the notice. On appeal, the Board of Adjustment may affirm or modify the amount of the proposed assessment. If the notice of assessment is not appealed within the time period allowed it shall constitute a final administrative determination of the amount of the assessment.

- F. The City may record the final assessment in the Cochise County Recorder's Office, including the date and amount of the assessment, the legal description of the property and the name of the City. Any assessment recorded after July 15, 1996, is prior and superior to all other liens, obligations, mortgages or other encumbrances, except liens for general taxes. A sale of the property to satisfy an assessment obtained under the provisions of this section shall be made upon judgment of foreclosure and order of sale. The City shall have the right to bring an action to enforce the assessment in the Superior Court of Cochise County at any time after the recording of the assessment, but failure to enforce the assessment by such action shall not affect its validity. The recorded assessment shall be prima facie evidence of the truth of all matters recited in the assessment and of the regularity of all proceedings prior to the recording of the assessment.
- G. Assessments that are imposed under subsection F. of this section run against the property until 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.
- H. An assessment that is past due accrues interest at the rate of ten percent, or such other rate as may be prescribed by A.R.S. § 44-1201.


I. A prior assessment for the purposes provided in this section shall not be a bar to a subsequent assessment or assessments for these purposes, and any number of assessments on the same lot or tract of land may be enforced in the same action.

Be it further ordained that all Ordinances, parts of Ordinances, Resolution and parts of Resolutions in conflict with the provisions of the Ordinance, or any part hereof, are hereby repealed upon the effective date of this Ordinance.

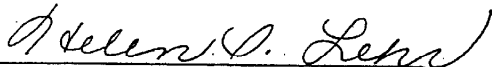
If any section, subsection or portion of the Ordinance is for any reason held to be invalid or unenforceable by the decision of any court of competent jurisdiction, such decision shall not affect the validity or enforceability of the remaining portions hereof.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Bisbee on this 3rd day of October, 2006.

APPROVED:


Ronald Oertle, Mayor

ATTEST:


Helen I. Lehr, City Clerk

APPROVED AS TO FORM:


John A. MacKinnon, City Attorney