

# TITLE 16 NEIGHBORHOOD PRESERVATION AND VACANT PROPERTY REGISTRY

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## CHAPTER 16.05 GENERAL PROVISIONS

### 16.05.010 Title

These regulations shall be known as the “Neighborhood Preservation Ordinance of the Town of Huachuca City” and may be cited as such and will be referred to hereinafter as “Title”. The Town of Huachuca City will be referred to hereinafter as the “Town”.

### 16.05.020 Purpose and Scope

- A. The purpose of this title is to promote and preserve the health, safety and welfare of the citizens of Huachuca City, and to protect its residents, neighborhoods and business district against hazardous, blighting and deteriorating influences or conditions that diminish quality of life and contribute to the downgrading of property values. This title serves these purposes by establishing minimum standards for the condition of the interior of residential buildings; by establishing requirements for the maintenance of all residential and nonresidential buildings and structures of any kind, and vacant and improved land; and by prohibiting acts and conduct that diminish quality of life.
- B. Unless otherwise specifically provided, this title shall apply to all buildings, structures and lands within the Town without regard to the use or the date of construction, improvement or alterations. It constitutes the minimum requirements and standards for structures, equipment and facilities; the responsibility of owners, operators and occupants; and for the occupancy of existing structures and premises.
- C. This title shall be applied lawfully, fairly, sensibly, consistently, and reasonably to promote the maintenance of all existing buildings and land in the Town. The intent is to ensure that individuals, business owners and families do not suffer undue hardship.

- D. This title shall not require changes in existing buildings and utilities when alterations were installed in accordance with the Town building codes in effect at the time of construction or alteration of the building, structure or utilities and have been satisfactorily maintained since that time. This subsection does not apply when the building, structure or utility has been determined to be an imminent hazard, unsafe, unhealthy, or deteriorated, when the building has been moved to another location, or in connection with the requirements of Chapter 16.20 in this Title.
- E. Repairs, additions or alterations to a building or structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the building, zoning, administrative and technical codes adopted by the Town and in effect at the time of such repair, addition or alteration.
- F. To the extent that any provision of this title conflicts with or is preempted by any state or federal law, including state and federal laws concerning the construction and maintenance of manufactured homes and mobile homes, the provisions of this title shall not apply.

### **16.05.030 Permits Required**

No building, structure or building service equipment regulated by this title or by the building and technical codes adopted by the Town shall be built, erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished unless a permit first has been issued by the building official in the manner provided in Title 15 of the Huachuca City Municipal Code and the building codes adopted by the Town.

## **CHAPTER 16.10 DEFINITIONS**

### **16.10.010 Definitions**

For purposes of this chapter, the following terms shall have the definitions provided below, provided, however, where terms are not defined in this chapter, they shall have the meanings ascribed to them in other chapters of the Huachuca City Municipal Code, including but not limited to the International Building Code, International Residential Code, International Fire Code, International Plumbing Code, International Mechanical Code, National Electric Code or NFPA 70. Words not defined shall be given their normal, ordinary meaning.

**Abandoned property.** The word “abandoned” is hereby defined as voluntarily relinquished by the owner for an apparently indefinite period-of-time. As applied to motor vehicles or other articles of property, the term includes, but is not limited to, any motor vehicle or other article of personal property which is left upon the public or private property without the consent of the public entity, owner, lessee, or occupant thereof for longer than two (4) hours.

**Abandoned structure.** An “abandoned structure” is hereby defined as any structure that is in a partially dismantled state, and which remains uninhabitable for more than twelve (12) consecutive months and there is no active building permit for work to the structure or which remains uninhabitable for more than thirty (30) months, even if there is an active building permit for work to the structure; and one of the following conditions exists:

- a. The structure’s roof or any part thereof is missing, or
- b. Any outside wall of the structure or portion thereof is missing, including any windows that are missing, or the structure is not dried-in.

**Abate.** To correct, including, but not limited to, repair, clear, rehabilitate, demolish, or remove.

**Abatement warrant.** An order, in writing, signed by a judge of a court of competent jurisdiction, authorizing any employee, authorized agent, representative or contractor of the Town to enter onto any affected property to abate specified conditions.

**Accessory improvements.** Improvements to land other than buildings, including, but not limited to, driveways, parking areas, pools, bridges, monuments, signs, sidewalks, walkways, exterior steps, railings, fences, screening walls, and retaining walls.

**Accessory use areas.** Those areas and buildings around a dwelling, which provide space for amenities and facilities, including but not limited to pay phones, picnic areas, recreation areas, laundry rooms, recreation rooms and refuse collection facilities.

**Acceptable indoor air quality.** Air in which there are no known contaminants at harmful concentrations.

**Addition.** An extension or increase to floor area or height of a building or structure.

**Agent.** A person residing or located within Arizona authorized by the owner of a property to make or order repairs or service to the property, building or structure and authorized to receive notices on behalf of the owner.

**Aggregate Material.** Any rock fragments, pebbles, sand, gravel, cobbles, crushed base, asphalt, dirt or similar material.

**Air Pollution.** No emission shall be permitted which can cause damage to health, animals, vegetation, or other forms of property, or which can cause any excessive soiling.

**Alter or alteration.** Any change in construction or a change in occupancy. Where the term of alteration is applied to a change of construction, it is intended to apply to any change, addition, or modification in construction. When the term is used in connection with a change of occupancy, it is intended to apply to changes of occupancy from one trade or use to another.

**Attractive Nuisance.** The maintaining of a condition, instrumentality, machine, or other agency that is dangerous to young children because of a child's ability to appreciate peril and which may be reasonably expected to attract them.

**Bathroom.** A room containing plumbing fixtures including a bathtub or shower.

**Bedroom.** Any room or space used or intended to be used for sleeping purposes in either a dwelling or sleeping unit.

**Blight or Blighted.** Unsightly, unsafe, or unsanitary conditions including, but not limited to, the accumulation of litter or debris; fences, buildings or other structures characterized by holes, breaks, rot, crumbling, cracking, peeling, or rusting; landscaping that is dead or damaged, characterized by bare dirt areas, uncontrolled growth or lack of maintenance, or is damaged; any other similar conditions of neglect, disrepair or deterioration; the exterior visible use or display of tarps, plastic sheeting or other similar materials as flexible or inflexible screening, fencing or walls covering upon a residential lot; excessive use, decay, degeneration, infestation, disrepair and deterioration that contribute to the depreciation of neighborhood property values or affect the health, safety, economic, aesthetic, or general welfare of citizens, regardless of the condition of other properties in the neighborhood.

**Building.** Any structure, either temporary or permanent, having a roof, supported by columns or walls, and use or built for the shelter or enclosure of persons, animals, chattels, or property of any kind. This shall include tents, awnings, or vehicles situated on private property and used for the purposes of building.

**Building code.** The code adopted by this jurisdiction regulating the design and construction of buildings and structures.

**Building official.** The officer or other person designated and authorized by the City Manager to enforce and administer the Town adopted building codes; or the building official's authorized representative.

**Closed container.** A container designed for transporting loose material such as garbage, refuse, or aggregate material with sides, top, and bottom made of solid and durable material such as metal or plastic, which will resist normal wear and tear and without any holes, cracks, or openings through which materials containing therein may escape, regardless of the degree to which the container is filled.

**Code official.** The official(s) designated and authorized by the City Manager to enforce and administer the provisions of this Title; or any duly authorized representative or designee of that official. Code official includes any peace officer, fire code official (fire-related issues only), building official or code enforcement officer.

**Commercial property.** Any property occupied by a business or businesses which sell, rent, trade or store goods, or which provide a service.

**Compliance order.** An order notifying the recipient that he or she is subject to civil or criminal prosecution for a violation of this chapter unless the violation is corrected.

**Contiguous.** Relating to property or residences, property that shares or abuts the boundary line or edge of the immediately adjacent property.

**Debris.** Substance or junk of little or no apparent economic value, which may be present in accumulation in excess of six (6) inches in height and ten (10) inches in diameter, including but not limited to deteriorated lumber, old newspapers, furniture, furniture parts, stoves, sinks, cabinets, household fixtures, refrigerators, car parts, equipment that is abandoned, broken or neglected, or the scattered remains of items.

**Default.** With respect to a mortgage, the obligor under the mortgage has breached or is in default of a repayment or other obligation in connection with that mortgage and has been notified by the mortgagee.

**Designee.** A person authorized in writing by the City Manager to carry out specific actions to enforce this chapter.

**Deteriorated or Deterioration.** A lowering in quality in the condition or appearance of a building, structure, or premises, characterized by holes, breaks, rot, crumbling, cracking, peeling rusting, vermin infestation, unsafe or unsanitary conditions, or any other evidence of physical decay, neglect, damage or lack of maintenance.

**Dilapidated.** A condition relating to a structure and consisting of multiple violations of the Town Code such that the structure is in an obvious and serious state of disrepair.

**Driveway:** A private way that provides access from a street to a building such as a house or garage.

**Dumping Ground:** Any area that is used for the storing, leaving, or abandoning of refuse, litter, garbage, waste, earth, rock or debris, including construction, agricultural, landscape, residential, commercial and industrial solid waste.

**Dwelling unit.** An enclosed space of one or more rooms that is designed, occupied, or intended for occupancy as living quarters exclusively for a single household, to include permanent provisions for living, sleeping, sanitation, and kitchen facilities.

**Excavation.** Any well, shaft, basement, pit, tunnel, trench, hole or other like or similar removal of earth material.

**Exterior surface.** Building exterior surfaces and attachments to buildings, including, but not limited to, walls, roofs, doors, windows, gutters, down spouts, antennas, fixtures, satellite dishes, porches, garages, patios, and chimneys.

**Fences, screen walls and/or retaining wall.** Self-standing structures designed to provide semi-privacy, security or bank retention between grade separation.

**Garbage.** Swill, offal and any accumulation of spoiled or fully decomposed, rotting or discarded animal, vegetable or other matter resulting from the handling, preparation, cooking, storage, consumption of plant and animal matter including meats, fowl, buds, fruits, vegetable, dairy products or other organic waste material subject to rapid decomposition and their waste wrappers or containers.

**Graffiti.** Any unauthorized inscription, figure, slogans, designs, drawings or other defacement that is written, marked, painted, carved, scratched, etched, sketched, or otherwise affixed to any exterior building surface, unscreened area, accessory improvement, or vehicle in a place which can be seen by the public and that degrades the beauty and appearance of property.

**Guard.** A building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.

**Habitable space.** A space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, screen enclosures, sunrooms, storage or utility space and similar areas are not considered habitable space.

**Health hazard.** The presence of any item(s) or condition(s) that adversely impact or jeopardize the wellbeing or health of an individual. Such items or conditions include, but are not limited to, evidence of occupancy without adequate water and sanitation facilities, or may be inclusive of human or animal waste, medical or biological waste, sharp, gaseous or combustible materials, radioactive waste, dangerous or corrosive chemicals or liquids, flammable or explosive materials, friable asbestos, offal and decay matter.

**Housekeeping unit.** A room or group of rooms forming a single habitable space equipped and intended to be used for living, cooking, sleeping and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower.

**Imminent danger or hazard.** A condition of real property that places a person's life, health, or property in high risk of peril when such condition is immediate, impending, on the point of happening and menacing.

**Impervious.** Incapable of being penetrated or affected by water or moisture.

**Industrial property.** Any property occupied by land uses whose primary operation involves manufacturing, assembling, processing or otherwise treating raw materials, semi-finished products, or finished products, for packaging and distribution to either wholesale or retail markets.

**Infestation.** The presence or apparent presence of insects, rodents, birds, animals, vermin or other noxious pests of a kind or in a quantity that may cause structural damage to a building or structure, or endangers health within or around a building or structure, or may have an adverse effect upon the health, safety, aesthetics, or general welfare of citizens.

**Inoperable vehicle.** For the purposes of this Title 16, the definition of an inoperable vehicle shall be the same as the definition located in Section 9.30.010 of Title 9 of this Code entitled Public Peace Morals and Welfare.

**Inspection warrant.** An order, in writing, signed by a judge of a court of competent jurisdiction, directed to a state, county or local official, authorizing entry into private property to inspect for violations of this Town Code or other relevant laws and requirements.

**Labeled.** Devices, equipment, appliances, or materials to which has been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that's maintains periodic inspection of the production of the above-labeled items and by whose label the manufacturer attests to compliance with applicable nationally recognized standards.

**Land.** All land in the Town whether improved or unimproved.

**Landscape debris.** Material generated or accumulated as a result of, or moved in the course of, landscape operations. Landscape debris includes, but is not limited to, grass clippings, leaves, branches, vegetative matter, rubbish, soil and rock.

**Leaf blower.** Any device that generates a stream of air that is designed, or used, to move landscape debris.

**Litter.** All decaying or non-decaying solid wastes, including but not limited to both combustible and non-combustible wastes, such as ashes, street cleanings, garbage, rubbish, dead animals, abandoned or junked vehicles or parts thereof, solid market and industrial waste, discarded appliances, discarded furniture, wood, paper, rags, empty barrels, crates, packing cases, excelsior, packing material, wrappings, cigarettes, cardboard, cans, metal, mattresses, bedding, crockery, trash, boxes, bottles, glass, cartons, refuse, debris, plaster, plastic, asphalt, tile, rock, bricks, concrete dribble, yard clippings, dry vegetation, weeds, dead trees and branches, leaves, vegetation and trees which may harbor insect or rodent infestations or may become a fire hazard, piles of earth mixed with any of the above or any foreign objects or other materials tending to create an unsightly condition and having an adverse effect upon the health, safety, economic, aesthetic, or general welfare of adjoining properties or occupants thereof.

**Manufactured home.** A structure built in accordance with the national manufactured housing construction and safety standards act of 1974 and Title VI of the housing and community development act of 1974 and any subsequent amendments.

**Minor vehicle repair.** Brake part replacement, minor tune-ups, change of oil and filter, repair of flat tires, lubrication and other similar operations are considered minor vehicle repairs. It does not include any removal or rebuilding of engines, repair or removal of differentials or axles, body or painting work of vehicles or vehicle parts or any vehicle repair that causes a vehicle to be inoperable for a period in excess of twenty-four (24) hours.

**Mobile home.** Structure built before June 15, 1976, on a permanent chassis, capable of being transported in one or more sections and designed to be used with or without a permanent foundation as a dwelling when connected to onsite utilities. Does not include recreational vehicles and factory-built buildings.

**Mortgage.** A first mortgage or other first-priority security interest in real property that is placed as security for the repayment of a loan and includes a first deed of trust.

**Mortgagee.** Any person or firm who holds a first-priority mortgage or other first-priority security interest in real property to secure a loan, whether as the mortgagee of a mortgage or the beneficiary of a deed of trust.

**Notice of default event.** With respect to a mortgage, a default regarding that mortgage has occurred and either: a) A notice of breach or notice of default and election to sell has been provided to the obligor and has been recorded in the Cochise County Recorder's Office; or b) An action for judicial foreclosure has been commenced regarding that mortgage by the filing of a complaint or petition for foreclosure in a court of competent jurisdiction.

**Notice of Violation (NOV).** A notice issued to a property owner or responsible person concerning violations of this Title.

**Noxious Weed.** Any species of plant which is, or is liable to be, detrimental or destructive and difficult to control or eradicate and shall include any species that the Arizona Department of Agriculture, after investigation and hearing, determines to be a noxious weed.

**Nuisance.** Any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- a. Injures or endangers the comfort, repose, health or safety of others;
- b. Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;
- c. In any way renders other persons insecure in life or the use of property; or
- d. Essentially interferes with the comfortable enjoyment of life and property or tends to depreciate the value of the property of others.

**Occupancy.** The purpose for which a building, or part thereof, is used or intended to be used.

**Occupant.** An individual or individuals or legal entity, through rights of ownership or tenancy, has possession or use and enjoyment of the subject real property and premises. Any person, permittee, licensee, or franchisee that places or maintains facilities in the city streets and public ways.

**Off-road vehicle.** A recreational vehicle designed for off-road use and not required to be licensed, including without limitation all-terrain vehicles, motocross cycles, sand rails and dune buggies.

**Openable area.** That part of a window, skylight or door which is available for unobstructed ventilation and which opens directly to the outdoors.

**Operator.** Any person who has charge, care or control of a structure or premises which is let or offered for occupancy.

**Owner.** A person, persons or legal entity listed as the current titleholder of real property, as recorded in the official records of the Cochise County Recorder's office.

**Owner's agent.** A statutory agent designated pursuant to A.R.S. 33-1902.

**Person.** Any individual, firm, partnership, association, social or fraternal organization, corporate, estate, trust, receiver, syndicate, branch of government, or any other group or combination of acting as a unit.

**Polluted.** A condition that exists in the water and is characterized by bacterial growth, algae, insect infestation, the remains of litter, debris, garbage, or any other foreign matter of which because of its nature or location, constitutes an unhealthy, unsafe, or unsightly condition.

**Pool.** A constructed or excavated exterior area designed to contain a regular supply of water.

**Premises.** A lot, plot or parcel of land, easement or public way, including any structures thereon.

**Private property.** Any real property not owned by the federal government, state, county, city, or political subdivision of the state.

**Property line.** The line that represents the boundary of property (including an apartment, condominium, room or other dwelling unit) owned, leased, or otherwise occupied by a person, business, corporation or institution.

**Public way.** Any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.

**Refuse.** Solid waste, including garbage.

**Resident.** A person that lives in a residence, or a responsible party.

**Residential property.** A property where the dominant use is non-transient occupancy of residential dwelling units.

**Residential rental property.** Property that is used solely as leased or rented property for residential purposes. If the property is a space rental mobile home park or a recreational vehicle park, residential rental property includes the rental space that is leased or rented by the owner of that rental space but does not include the mobile home or recreational vehicle that serves as the actual dwelling if the dwelling is owned and occupied by the tenant of the rental space and not by the owner of the rental space.

**Responsible person.** An owner, tenant, renter, lessor, lessee, manager, agent, lien holder or a fiduciary or person with power of attorney or other person who is occupying or having charge, possession or control of the premises or has authority and ability to act on behalf of, or in the interest of, the owner. When property is held in common by more than one (1) owner, each owner is a responsible person, even when a homeowner's association has been formed to manage and maintain such commonly owned property. Such a homeowner's association shall also be a Responsible Person. When any subdivision or planned area development (PAD) has been approved by Town Council and provisions have been made for the creation of an architectural review committee, homeowner's association or similar committee, which has been created, or will be created, for the purpose of controlling or regulating matters of common concern or maintenance, the developer of said subdivision or PAD shall submit to the Town Clerk, the names, addresses and telephone numbers of the officers of said committee or association at the time the organization is granted autonomy. Until such information is supplied to the Town Clerk, the developer shall remain a Responsible Person for the purposes of maintaining all common property in accordance with this section. Once granted autonomy, the chairperson, secretary or principal officer of any committee or association, as described above, shall notify the Town Clerk of any change in officers and provide the names, addresses and telephone numbers of the new officers within thirty (30) days after the change becomes effective. Until the Town Clerk receives notice of any new officers, the officers on record shall remain Responsible Persons as provided herein.

**Rooming house.** A building arranged or occupied for lodging with or without meals, for compensation and not occupied as a one- or two-family dwelling.

**Rooming unit.** Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

**Rubble.** Broken solid surface fragments usually resulting from the decay or deterioration of a building; miscellaneous mass of broken or apparently worthless materials.

**Screened area, exterior.** An area separated by a permanent non-flexible device to completely conceal one (1) element of a property from other elements or from adjacent or contiguous property. Examples include but are not limited to fencing six (6) feet in height that is made from solid wood, brick or chain link with opaque slats.

**Sidewalk area.** That portion of a street between the curb-lines, or the lateral lines of a roadway, and the adjacent property lines, whether identified on the ground as a pedestrian walkway or not.

**Sleeping unit.** A room or space in which people sleep which can also include permanent provisions for living, eating and either sanitation or kitchen facilities, but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

**Slum property.** Residential rental property that has deteriorated or is in a state of disrepair and that manifests one (1) or more of the following conditions that are a danger to the health or safety of the public:

- a. Structurally unsound surfaces, roof, walls, doors, floors, stairs, stairwells, porches or railings.
- b. Lack of potable water, adequate sanitation facilities, adequate water or waste pipe connections.
- c. Hazardous electrical system or gas connections.
- d. Lack of safe, rapid egress.
- e. Accumulation of human or animal waste, medical or biological waste, gaseous or combustible materials, dangerous or corrosive liquids, flammable or explosive materials or drug paraphernalia.

**Smoke.** No emission of smoke from any source shall be permitted to exceed a greater density than the density described as No. 1 on the Ringleman Chart. However, smoke may be emitted, which is equal to but not darker than No. 2 on the Ringleman Chart, for not more than four minutes in any eight-hour period. For the purpose of grading the density of smoke, the Ringleman Chart, as published by the U.S. Bureau of Mines shall be the standard. All measurements shall be taken at the point of emissions of the smoke.

**Stabilization or stabilized.** Treatment of ground surfaces with asphaltic concrete, cement, concrete, hardscape, penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate, decomposed granite cover, crushed granite cover, aggregate cover, gravel cover, grass or other continuous vegetative cover, or any combination of these stabilizers.

**Store.** The parking, leaving, locating, keeping, maintaining, depositing, remaining, or having a physical presence.

**Structure.** A combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

**Tenant.** A person who rents, leases or subleases, through either a written or oral agreement, real property from another for a fixed time.

**Toilet room.** A room containing a water closet or urinal but not a bathtub or shower.

**Vacant.** With respect to real property and “vacant real property”, real property and improvements that are not presently occupied by persons lawfully entitled thereto. The term does not include real property that is unoccupied by reason of the temporary absence of lawful occupants who intend to return and resume occupancy.

**Vacant and unsecured building or structure.** Any vacant or abandoned building or structure, regardless of whether or not the building or structure is surrounded in whole or in part by a fence or wall, that is: 1) a fire or health hazard because of the accumulation of weeds, debris, or flammable or combustible waste or refuse; or 2) an attractive nuisance or hazard to the public because unsecured doorways or window openings or holes in the exterior of the building or structure permit entry of unauthorized persons.

**Vacant structure.** Any unoccupied or illegally occupied structure.

**Vegetation.** Plant growth, whether living or dead, characterized by grass, weeds, bushes, cactus, or trees.

**Vehicle.** Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracts.

**Ventilation.** The natural or mechanical process of supplying conditioned or unconditioned air to or removing such air from any space.

**Weeds.** In addition to those noxious weeds defined in A.R.S. 3-201, weeds include, but are not limited to, bull thistle, cocklebur, foxtail, horseweed, lambs quarters, London rocket, mallow, milkweed, pigweed, mustards, prickly lettuce, ragweed, Russian thistle, tumbleweed, shepherds purse, sowthistle, which horsenettle, and willow wee, regardless of whether an owner or occupant regards the plant growth as desirable. In addition, any vegetation, in excess of twelve (12) inches, growing in an uncontrolled manner, which will, if not cut or destroyed, become a fire hazard or menace to adjacent property is for the purpose of this chapter a weed.

**Yard, front.** The area extending the full lot width and situated between the front property lot line and the face of the principal building, which is parallel to, or most nearly parallel to, the front lot line.

**Yard, rear.** The area extending the full lot width and situated between the rear lot property line and the face of the principal building, which is parallel to, or most nearly parallel to, the rear lot line.

**Yard, side.** The area extending between the front yard and the rear yard and situated between the side lot property line and the face of the principal building, which is parallel to, or most nearly parallel to, the side lot line.

## CHAPTER 16.15 PROPERTY MAINTENANCE STANDARDS

### 16.15.010 Scope

In this chapter, unless otherwise provided, the terms “exterior premises and land” applies to all land, vacant or improved, located within the Town.

### 16.15.020 Litter Control

- A. **Accumulation of refuse, debris and litter is prohibited.** Each owner, lessee, tenant, resident or occupant shall maintain all exterior premises and land, so it is free of accumulated refuse, debris, litter or inoperable vehicles. This means contained or uncontained refuse, debris or litter that is present on a property in a manner not authorized by the Town.
- B. **Accumulation of refuse, debris and litter from a construction site is prohibited.** It is unlawful for any property owner, agent, or contractor in charge of any construction or demolition site to cause, maintain or permit the accumulation of any refuse, debris or litter on the site before, during, or after completion of the project except in a designated contained area or to allow any such refuse, debris or litter to become windblown and carried or deposited upon any alley, street, public place or adjacent private property.
- C. **Dumping of refuse, debris and litter is prohibited.** No person shall throw, deposit or dump any refuse, debris or litter on any land, whether owned by such person or not, except that approved receptacles may be used for the collection and containment of such refuse, debris or litter provided they are maintained in such a manner to prevent the refuse, debris or litter from becoming windblown and being carried about the area or deposited on any alley, street, public place or adjacent private property.
- D. **Failure to provide receptacles to contain refuse, debris and litter is prohibited.** It is unlawful for any business, corporation, firm or person to fail to provide approved litter or trash receptacles for the containment of refuse, debris, litter and trash generated within or upon their premises or to allow refuse, debris, litter or trash from approved receptacles to become windblown and be carried about the area or deposited on any alley, street, public place or adjacent private property.
- E. **Burning of refuse prohibited.** Except as specifically permitted by this or other adopted codes, the open burning or incineration of refuse is prohibited.

### 16.15.030 Care of Premises

All exterior premises and land shall be maintained in accordance with the following minimum standards so as not to create a public nuisance. All exterior premises and land area shall be kept free from dry vegetation, tumbleweeds, weeds, bushes and tall grass and trees which present a visual blight upon the area, which may harbor insect or rodent infestations, or dry vegetation which may likely become a fire hazard or result in a condition which may threaten the health and safety or the economic welfare of adjacent property owners or occupants.

- A. **Accumulation of vegetation prohibited.** Each owner, lessee, tenant, resident or occupant shall maintain a premises or land, so it is free of the accumulation or untended growth of vegetation. The accumulation or untended growth of vegetation means the presence of plants on property that create a fire, safety or health hazard, or that attract vermin either on the property, on neighboring properties, or on both, and includes but is not limited to:
1. Any lawn grass that exceeds twelve (12) inches in height.
  2. All weeds that exceed twelve (12) inches in height.
  3. All hedges along the front and side lot line to the front line of a residence that exceed four (4) feet in height.
  4. All noxious weeds, defined as all grasses, annual plants and vegetation, other than trees and shrubs, provided however, this term shall not include cultivated flowers and individual or community gardens.
  5. Dead trees or dead shrubs.
  6. Dead palm fronds within ten (10) feet of the ground, a structure, a fence or wall, or of any combustible other than the tree from which the fronds have grown.
  7. Any tree, shrub, or other form of vegetation of any kind on the property or on the adjoining right-of-way, street, or alley that extends over or under the sidewalk space (whether sidewalk is installed or not) or roadway in a manner that may interfere with the reasonable use of the street, sidewalk space, or alley for pedestrian or vehicular traffic of any kind or that may obstruct the view or light distribution of traffic-control signs or devices or luminaries. Vegetation must be trimmed and maintained to provide an unobstructed pedestrian path a minimum of 48 inches in width and 80" in height from grade.
- B. **Vacant lots or parcels shall be maintained.** Vacant lots or parcels that are located within an established subdivision or in a business zone shall be maintained free from weeds or untended plant growth the same as if it was improved. Vacant lots or parcels that are adjacent to established subdivisions or a business zone shall be maintained free from weeds or untended plant growth in excess of twelve (12) inches in height a distance of seventy-five (75) feet from the property line adjoining the improved property and twenty-five (25) feet from the property line adjoining a public or private street.
- C. **Maintenance of public rights-of-way.** It is the duty of all tenants or occupants of any real property abutting any local street or alley in the Town, or if no tenant or occupant, then the property owner thereof, shall be required to keep that part of the street between such property lines and the curb, including the gutter of the street on which such property abuts, or up to the median point of an alley, improved or unimproved, in a safe and sanitary condition at all times. Said area shall be kept free from debris, litter and trash of all kinds, except household waste that is being properly disposed. Grass, weeds, or other groundcover shall not exceed twelve (12) inches. This duty extends to and includes:

1. Any portion of a street or street right-of-way which has been opened for public use, between the curb line (or if there is no curb line, the edge of street pavement), and the abutting property line. This includes the abutting sidewalk area (whether the sidewalk is installed or not). Sidewalk areas shall be kept free from sand, leaves, algae growth, vegetation and slippery conditions.
2. One-half (½) of the width of abutting alleys, from the property line to the centerline of the alley.

D. **Composting.** The provisions of this Section do not prohibit the maintenance of a compost pile on residential property, so long as the compost pile does not create a hazard and is:

1. Contained;
2. Maintained so as not to produce offensive odors or attract flies or vermin;
3. Located, insofar as reasonably possible, so that it is not visible from abutting properties or streets;
4. Maintained in compliance with all rules, regulations and procedures that may be promulgated by the code official.

A compost pile not in compliance with all the provisions of this section is in violation of this Chapter.

E. **Insect, rodent and animal control.** All exterior premises shall be kept free from insect and rodent harborage and infestation and other noxious pests where such harborage or infestation threatens the health, safety or welfare of a person or persons. Where harborage or infestation is found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate harborage and prevent re-infestation. This provision shall not require action to disturb the natural or cultivated activity of bees, rabbits or other insects and animals where such activity is not a danger or nuisance to any resident or residents of the area, and where other applicable legal requirements are met.

F. **Walkways and driveways.** All walkways, stairs, driveways, parking spaces and similar areas located on the exterior premises shall be kept in a proper state of repair and maintained free from hazardous conditions.

G. **Parking in front yards.** No vehicle, recreational vehicle, accessory vehicle, trailer, or similar type vehicles or trailers, or parts for such vehicles or trailers shall be parked or stored in the portion of the front yard directly in front of a residence.

H. **Exhaust vents.** Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.

I. **Exterior hazard or attractive nuisance.** All premises and land shall be kept free of any condition that constitutes a health hazard, imminent hazard, or attractive nuisance. Such prohibited conditions include, but are not limited to the following:

1. **Accessory structures, fences, screen walls and retaining walls.** All accessory structures on the exterior premises, including, but not limited to, detached garages, guest houses, storage buildings and sheds, as well as all fences, screen walls and retaining walls shall be safe, structurally sound and maintained so that they do not constitute a hazard, blight or condition of disrepair. Examples of hazards, blight or conditions of disrepair are inclusive of, but not limited to leaning fences, fences that are missing slats or blocks, graffiti, peeling paint, deterioration of paint or materials, rotting or damaged materials.
2. **Defacement of property.** No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti. It shall be the responsibility of the owner to restore said surface to an approved state of maintenance and repair.
3. **Abandoned refrigerators.** All premises shall be kept free of iceboxes, refrigerators or other containers with a capacity of one and one-half (1 ½ ) cubic feet or greater that have an attached door or lid, snap-lock or other locking device that may not be released from the inside and that are abandoned, discarded or no longer used for refrigeration and are in any place accessible to children. In addition to any other remedy provided under this chapter, a code official may immediately and without prior notice remove an attached door, lid or other locking device or take other similar action to abate the hazard presented.
4. **Excavations.** All premises shall be kept free of abandoned or unsecured excavations, or any excavation that creates a hazard to public safety or an attractive nuisance. An excavation made under permit and secured and maintained in a manner that complies with the applicable permit requirements is not considered a violation of this section. An excavation or mound is considered secure when:
  - a. It is protected by a permanent or complete five-foot minimum height enclosure that surrounds the excavation or property.
  - b. A well, pit, abandoned swimming pool, or similar excavation is completely and permanently covered, fenced securely or protected in an equivalent manner.
5. **Grading and Drainage.** All exterior premises, with the exception of approved retention areas and reservoirs, shall be graded and maintained to prevent erosion of soil and to prevent the accumulation of stagnant water thereon, when such water causes a hazardous or unhealthy condition, becomes a breeding area for insects, causes soil erosion or which causes damage to neighboring property.

6. **Sanitation.** All exterior premises shall be maintained in a safe and sanitary condition. The property owner or occupant shall keep that part of the exterior premises which such person occupies or controls in a safe and sanitary condition. It shall be unlawful for any person to permit any rubbish, trash, refuse, junk and other abandoned materials or any conditions which provides the harborage for rats, mice, snakes or other vermin to remain in a yard or open area owned, occupied or in the possession of such person for a period of more than five (5) days. Garbage and refuse shall be disposed of in accordance with the provisions of Title 8 of the Huachuca City Municipal Code.
7. **Repeated Dumping.** Vacant lots or lands, which have been subject to dumping on more than one (1) occasion, shall be secured to prevent further occurrences of dumping. Signs stating “**no dumping**” shall be erected in accordance with applicable laws on vacant lots or lands, which have been subject to dumping on more than one (1) occasion.
8. **Toxic, hazardous, and flammable materials.** The storage and use of poisonous, corrosive, explosive, flammable and combustible liquids, radioactive materials, and other materials hazardous to life or property, as determined by the Town, shall conform to all applicable portions of the currently approved edition of the International Building Code and the International Fire Code. These standards are in addition to all applicable state and federal regulations.
9. **Outdoor storage.** Outdoor storage on residential properties is prohibited under the following conditions:
  - a. When stored in the front yard.
  - b. When stored in the side yard or rear yard and is not screened by a minimum five (5) foot high solid wall or opaque fence.
  - c. When it exceeds twenty-five (25) percent of the total lot area.
  - d. When stored in an open covered porch that is visible from beyond the boundaries of the lot.
  - e. When stored in an open carport that is visible from beyond the boundaries of the lot or where the amount of storage restricts an automobile from being properly stored within the carport. A double carport will require enough space to store two (2) automobiles.
  - f. When storage items include garbage, refuse or debris not contained in an approved receptacle.
10. **Maintenance of swimming pools and architectural pools.** All swimming pools and architectural pools, ponds and spas shall be properly maintained so as not to create a safety hazard or harbor insect infestation or create a visibly deteriorated or blighted appearance. They shall meet the following standards:
  - a. It shall be unlawful for any person, owner, lessee, tenant, occupant, or business entity (hereinafter collectively “person”) to have, keep, maintain, cause or permit a swimming pool where the water quality deteriorates to such a poor level as to prevent clear visibility from the water’s surface to the pool bottom or as to create a breeding ground for mosquitoes or other insects. Water shall not be allowed to stagnate, or to become stale or foul through lack of circulation.

- b. Architectural pools that contain fish must be maintained to provide for the health of the fish. Dead fish must be removed immediately.
- c. Private swimming pools, hot tubs and spas shall be surrounded by a fence or barrier at least sixty (60) inches in height above the finished ground level measured on the side of the barrier away from the pool. Gates and doors in such barriers shall be self-closing and self-latching. Where the self-latching device is less than 54-inches above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. Self-closing and self-latching gates shall be maintained such that the gate will positively close and latch when released from an open position of 6-inches from the gatepost. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier. Provided, however, spas or hot tubs with a safety cover that complies with ASTM F 1346 shall be exempt from the provisions of this section.

## **CHAPTER 16.20 BUILDING MAINTENANCE STANDARDS**

### **16.20.010 Scope**

In this chapter, unless otherwise provided, the “building interior” section applies to the interior, utility service, plumbing and mechanical equipment of all residential dwellings and dwelling units in the Town. The “building and structure exteriors” section applies to all residential and non-residential structures and buildings in the Town.

### **16.20.020 Building interior**

#### **A. Fire safety.**

1. The presence and operations of window openings, size and condition of exits, bars, grills, grates covering windows and openings shall allow for safe and rapid egress in emergency situations. At least one (1) window and all doors in living/sleeping rooms in dwelling units must have an operable release mechanism that allows safe and rapid egress without the use of separate tools.
2. Every dwelling unit or guest room shall have unobstructed access directly to the outside, or to a public corridor. Every door, stairway, passageway or other means of exit shall be of sufficient size, width and arrangement so as to provide safe and rapid egress in the event of fire. Every walking surface of any means of exit shall be maintained free of warping, rotting, or other damage or obstructions so as to provide safe and rapid egress in the event of fire.
3. Every existing dwelling unit shall be provided with smoke detectors in good operating conditions as required by the adopted Fire Code of the Town of Huachuca City.

## **B. Heating and cooling systems.**

1. **Heating.** Every habitable room within a dwelling unit, guest room, and congregate residence shall be provided with safe heating facilities which are properly installed and maintained in a sound condition and are capable of providing adequate heating, appropriate for the climate, to assure a safe living environment. All heating facilities shall be free from health hazards associated with ventilation, mounting, electrical and gas connections and other defects. Unvented fuel-burning heaters must be of a listed and approved type but are prohibited as the sole source of heating. Ovens, stoves or ranges, or other cooking appliances cannot be used for the purpose of heating any portion of a dwelling. Listed and approved type of portable space heaters may only be used as the sole source of heating on a temporary basis (as determined by the Code Official) when the permanent heating system is being repaired or replaced.
2. **Cooling.** Every dwelling unit, guest room, and congregate residence shall be provided, in at least one (1) habitable room, with either mechanical cooling or an alternate cooling method. Cooling facilities shall be installed and maintained in a safe condition and in accordance with the manufacturer's recommendations, and shall be capable of providing adequate cooling, appropriate for the climate, to assure a safe living environment. Evaporative cooling shall be maintained to be free of excessive rust, corrosion or mineral deposits, that limit proper operation. Any mounting apparatus for a cooling facility must be structurally sound. Mechanical fans or portable evaporative cooling devices may only be used as the sole source of cooling on a temporary basis (as determined by the Code Official) when the permanent cooling system is being repaired or replaced.

## **C. Ventilation.**

1. Habitable rooms within a dwelling unit shall be provided with natural ventilation by means of openable exterior openings with an area of not less than five (5) square feet. A mechanical ventilating system may be provided in lieu of required exterior openings for natural ventilation, so long as such a system is capable of providing thirty-five one-hundredths (0.35) air changes per hour and so long as the air supply is taken from the outside.
2. Bathrooms, laundry rooms, water closet compartments and similar rooms shall be provided with natural ventilation by means of openable exterior openings with an area not less than one and one-half (1 1/2) square feet. A mechanical ventilation system connected directly to the outside may be provided in lieu of required exterior openings for natural ventilation in bathrooms that contain a bathtub, shower or combination thereof; laundry rooms; and similar rooms. Such a system must be capable of providing five (5) air changes at the rate of fifty (50) cubic feet per minute if the system operation is intermittent, or twenty (20) cubic feet per minute if the operation is constant. The point of discharge of exhaust air shall be at least three (3) feet from any opening into the building. In bathrooms containing only a water closet, lavatory or combination thereof, or in similar rooms, ventilation may be provided with an approved mechanical recirculating fan or a similar device designed to remove odors from the room.

**D. Electrical Systems.**

1. All dwellings and dwelling units shall be provided with electrical service. Electrical facilities connected to or in any building or structure are to be maintained hazard-free and in a state of good repair. The electrical system shall be free from hazards such as bare wiring; overloaded circuits or services; equipment not properly grounded; over-fused circuits; misuse of wiring, including the use of extension cords in lieu of permanent wiring; non-approved wiring; and wiring exposed to moisture or extreme heat. Broken, loose, frayed, inoperable, defective or missing portions of the electrical service, lines, switches, outlets, fixtures and fixture coverings shall be repaired or replaced.
2. All electrical equipment, wiring and appliances shall be installed and maintained in a safe manner and in accordance with all applicable laws.
3. Every habitable room must have at least two (2) electrical receptacle outlets, or one (1) outlet and one (1) electric light fixture. Every bathroom, water closet compartment and laundry room must have at least one (1) electric light fixture.

**E. Mechanical equipment.** All mechanical equipment and appliances shall be properly installed, maintained in a safe, working, operating condition, and shall be free of any defect that impairs operability.

**F. Plumbing systems.**

1. Dwelling units shall be provided with one (1) or more bathrooms equipped with a water closet, lavatory, and either a bathtub or shower. Hotels or subdivisions thereof where both sexes are accommodated shall contain at least two (2) separate toilet facilities that are conspicuously identified for male or female use, each of which contains at least one (1) water closet. Additional water closets shall be provided on each floor for each sex at the rate of one (1) for every additional ten (10) guests or fractional part thereof, in excess of ten (10). Each sink, bathtub and shower shall have hot and cold running water as necessary for its normal operation and use.
2. All dwellings or dwelling units shall have a kitchen, which shall include an indoor cooking area. The cooking area must be provided with a sink separate and apart from any bathroom sink or lavatory. Each kitchen sink shall have hot and cold running water necessary for its normal operation and use.
3. All plumbing systems are to be maintained safe and hazard-free and in a state of good repair. Every dwelling or dwelling unit shall have an adequate potable water supply. Every plumbing fixture, water and waste-pipe and gas connection shall be properly installed in accordance with all applicable laws and maintained in good and sanitary working condition so as to prevent structural deterioration or health hazards and are to be free from leaks and obstructions.
4. All plumbing fixtures shall be connected to a public sewer system or to an approved private sewage disposal system, with the connections free from leaks, blockages, or other defects. All plumbing fixtures shall be connected to an approved system of water supply and provided with hot and cold running water necessary for its normal operation.
5. When a structure is equipped with a gas supply system, it must be installed and maintained in a safe hazard-free condition.

**G. Interior surfaces and features.**

1. Every wall or vertical support must be sufficient to carry imposed loads safely, and must not lean, buckle, or split due to defect or lack of maintenance.
2. Every ceiling, roof, and ceiling and roof support must be sufficient to carry imposed loads safely, and must not buckle, sag or split due to defective material or deterioration.
3. Every floor and floor support shall be maintained in a safe and structurally sound condition, and every existing floor covering shall be maintained in a safe condition that is free of defect or deterioration that creates an unsafe or unsanitary condition.
4. Every interior door, cabinet and other feature shall be maintained in a safe and structurally sound condition.
5. All interior coverings, finishes, surfaces including walls, ceilings and floors shall be maintained in a good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. All walls, ceilings or floors shall be free from holes, breaks and loose or rotting materials. Cracked or loose plaster, wallboard, decayed wood or other defective surface conditions shall be corrected.
6. All repair work shall be done in a workman-like manner.

**H. Ceiling heights.** Habitable spaces, kitchens, halls, bathrooms and toilet compartments must have a ceiling height of not less than seven (7) feet measured to the lowest projection of the ceiling. If any room has a sloping ceiling, at least one-half (½) of the room area must have the prescribed minimum ceiling height.

**I. Interior sanitation.**

1. The interior of every building or structure shall be maintained from any unsafe or unsanitary accumulation of refuse.
2. All sanitary facilities shall be installed and maintained in a safe and sanitary condition.
3. Every dwelling unit must have a kitchen, which shall include a sink. All sinks, drain boards and countertops adjacent to the kitchen sink shall be made of non-absorbent materials, or must be covered by a non-absorbent material.

**J. Interior insect and rodent control.** The interior of all buildings and structures shall be kept free from infestation of insects, rodents and other noxious pests where such infestation threatens the health, safety or welfare of a person or persons.

**K. Access control.**

1. Exterior doors, including sliding glass doors, must have an operable locking mechanism. Double cylinder deadbolt locks or other mechanisms that prevent rapid egress in case of fire or other-type emergency are prohibited.
2. All windows must have an operable locking mechanism.

## 16.20.030 Building and structure exteriors.

- A. **Exterior surfaces.** All exposed exterior surfaces, windows and doors shall be maintained to be free of deterioration that is a threat to health and safety, impervious to moisture and weather elements, and shall not otherwise present a deteriorated or blighted appearance. Windows, doors, locks on doors, and hinges must be present and installed properly. These items must be free from deterioration or blighting conditions. Examples of such deterioration and blight may include the following:
1. Improperly anchored canopies, metal awnings, stairways, exhaust ducts, and overhead extensions;
  2. Exterior windows and doors that are not fitted securely in their frames and are not substantially weather tight or that have inoperable locks;
  3. Paint that is deteriorated, indicated by peeling, flaking, cracking, blistering or mildew, resulting in exposed, bare unprotected surfaces;
  4. Window screening not maintained in good condition;
- B. **Weather protection.** All weather-exposed exterior surfaces of every building, including windows and doors, shall provide weather protection. Every building shall be weather protected to provide shelter for the occupants against the elements and to exclude moisture and dampness.
- C. **Protective treatment.** All exterior wood surfaces, except for decay-resistant woods, must be protected from deterioration and from the elements by paint or other protective treatment or covering. Any exterior wood surface that has paint that is peeling, flaking, cracked, blistered or chipped, resulting in bare, unprotected surfaces, must be repainted. All metal surfaces subject to corrosion or rust must be treated or coated to inhibit corrosion and rust, unless corrosion or rust is a design element.
- D. **Boarded window or door openings.**
1. No occupied structure may have boarded window or door openings, except as necessary on a temporary basis to keep the structure secure while under repair.
  2. While vacant structures may temporarily be secured by boarding up window and door openings in accordance with Section 16.25.050 of this Title having or maintaining boarded window or door openings on a vacant structure for three hundred sixty-six (366) days in any two-year period is prohibited.
- E. **Windows, skylights and doors.** Every window, skylight, door and all associated frames, shall be kept in sound condition, repair and weather tight. All glazing materials shall be maintained free from cracks and holes. Every window, other than fixed windows, shall be easy to open and capable of being held in position by window hardware. All window and door hardware shall be maintained in good condition and shall function properly.
- F. **Decorative features.** All cornices, belt courses, corbels, trim, eaves, fascia, soffit, wall facings and similar decorative features shall be maintained in good repair free of decay, rot or loose material, and have proper anchorage.
- G. **Foundations, walls, roofs and chimneys.** Every foundation, wall, roof, chimney and all exterior surfaces of buildings and structures shall be maintained in structurally sound condition and shall provide weather protection. All wood showing evidence of termite damage or decay, where structural or functional integrity is impaired, shall be replaced.

- H. **Foundations.** All foundations shall be maintained in a structurally sound condition and shall be capable of supporting the load placed thereon by normal use. Foundations shall have effective waterproofing.
- I. **Walls.** Exterior walls shall be maintained in a structurally sound condition that is substantially weathertight and weatherproof and shall be protected from the elements by paint or other approved protective covering. Exterior walls must be free of loose, crumbling or deteriorated plaster or rotted, split or buckled exterior wall coverings.
- J. **Roofs.** The roof of every building or structure shall be maintained in a structurally sound condition and shall provide weather protection for that building or structure. Roof coverings shall not be rotted, broken, split, buckled or otherwise deteriorated. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structures. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions.
- K. **Chimneys.** All chimneys must be maintained to be structurally safe and in sound condition.
- L. **Stairways, decks and porches.** All stairways, decks and porches shall be maintained in a safe condition and shall be capable of supporting the load and resisting all forces placed thereon by normal use. Every handrail and guardrail shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.
- M. **Coolers and their apparatus.** Evaporative coolers, cooler stands and any cooler mounting apparatus shall be maintained in a condition free from excessive accumulation of scale, rust, corrosion or mineral deposits. Cooler stands and any mounting apparatus must be structurally sound. Unused, deteriorating and unattached evaporative coolers are to be removed from the structure.
- N. **Accessory structures.** All accessory structures, including but not limited to detached garages, fences and walls, must be structurally sound and be free of disrepair. Examples of disrepair include missing slats, posts or blocks, or damage, deterioration or rot. Fences and walls cannot be constructed or covered with materials not designed or commonly used for that purpose, such as pallets or tarps. Fences and walls must be properly anchored so as to not be in danger of failure or collapse.
- O. **Exterior, weather tight, watertight and vermin-proof.** Every foundation, roof and exterior wall shall be reasonably weathertight, watertight and vermin-proof and shall be kept in sound condition.
- P. **Address identification.** All buildings, whether new or existing, with an assigned address shall display the address in a manner to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background and shall not be obstructed by trees, shrubs or anything that would tend to hide or obscure the numbers.

## **CHAPTER 16.25 UNSAFE/DILAPIDATED STRUCTURES AND EQUIPMENT**

### **16.25.010 General**

Buildings, structures or equipment that are or hereafter become so deteriorated, damaged, dilapidated, or in need of repair so as to present a threat to the health, safety and welfare of the community constitute a nuisance and shall be abated by repair, rehabilitation or demolition as provided in this Title or other applicable law, code, ordinance or regulation.

### **16.25.020 Unsafe structures**

It is unlawful to maintain an unsafe structure that is found to be dangerous to life, health or property by not providing minimum safeguards to protect or warn occupants in the event of a fire, or because such structure contains unsafe equipment, or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

### **16.25.030 Unsafe equipment**

It is unlawful to maintain unsafe equipment that includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health or property.

### **16.25.040 Structures unfit for human occupancy**

A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this Title, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

### **16.25.050 Unsecured vacant buildings or structures**

Unsecured vacant buildings or structures are unlawful and are prohibited by this chapter. The following requirements shall apply to all vacant and unsecured buildings or structures, regardless of whether the building or structure is surrounded in whole or in part by a fence or wall or not.

- A. **Duty to clean, secure and prohibit trespass.** The owner or responsible person of a vacant building or structure shall remove any accumulation of weeds, combustible waste, or refuse from the interior of a building or structure and the surrounding yards; and shall secure all doors, windows and other openings to prevent unauthorized entry. No vacant building or structure shall be allowed to be used for storage. The owner or responsible person shall post both the structure and premises with signs to provide conspicuous and reasonable notice prohibiting entry (i.e., “**No Trespassing**” signs).
- B. **Reinspection of secured buildings and structures.** The code official shall periodically reinspect a building or structure that was cleaned or secured pursuant to an administrative or judicial order to ensure continued compliance with the order and this Title. The code official may assess a reinspection fee for actual costs of each inspection in those instances where the building or structure is again found to be vacant and unsecured or in need of debris or weed removal.
- C. **Abatement of unsecured vacant buildings or structures.** When ordered abated, an unsecured vacant building or structure shall be cleaned and secured as follows:
  - 1. All accumulated refuse or stored materials that poses a fire, safety or health hazard within or upon the property or premises shall be removed; and
  - 2. All unsecured doorway, windows, or exterior openings shall be barricaded in accordance with standards established by the code official, which shall be kept on file with the Town Clerk, and in accordance with 16.20.030D of this Title.
  - 3. Both the structure and the exterior premises shall be posted with signs that provide reasonable notice prohibiting entry (i.e. “**No Trespassing**” signs).

#### **16.25.060 Closing of vacant buildings or structures**

If a building or structure is vacant and determined to be unfit for human habitation or occupancy, but is not in danger of structural collapse, the code official is authorized to post a placard and/or condemnation on the premises and to order the structure be closed up as to not be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the costs thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any available legal resource.

- A. **Notice.** Whenever the code official has condemned a building, structure or equipment under the provisions of this Section, notice shall be provided in accordance to Section 16.50.060 of this Title.
- B. **Placarding.** Upon failure of the owner or responsible person to comply with the notice provisions within the given time, the code official shall post on the premises, building, structure or on defective equipment a placard bearing the words “**CONDEMNED**” and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.
- C. **Placard removal.** The code official shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. It is unlawful for any person, other than a code official, to remove the condemnation placard.

- D. **Prohibited occupancy.** Any occupied building or structure condemned and placarded by the code official shall be vacated as ordered by the code official. It shall be unlawful for any person to occupy a placarded building or structure. Any person who shall occupy a placarded building or structure or who shall let anyone occupy a placarded building or structure or operate placarded equipment shall be subject to the citations and/or penalties as provided for in Section 16.50.090 of this Title.

#### 16.25.070 Emergency measures

- A. **Imminent danger.** When, in the opinion of the code official, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupancy of the structure, or when there is actual or potential danger to the building occupants or those in close proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The code official shall cause to be posted at each entrance to such structure a notice to read as follows: “**THIS STRUCTURE IS UNSAFE AND ITS OCCUPANCY HAS BEEN PROHIBITED BY ORDER OF THE CODE OFFICIAL.**” It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or demolishing the same structure.
- B. **Temporary safeguards.** Whenever in the opinion of the code official there is imminent danger due to an unsafe condition, the code official shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe and shall cause such other action to be taken as the code official deems necessary to meet such emergency.
- C. **Closing streets.** When necessary for public safety, the code official shall temporarily close structures and close, or order the authority having jurisdiction to close sidewalks, streets, public ways and places adjacent to unsafe structures and prohibit the same from being utilized.
- D. **Emergency repairs.** For the purpose of this Section, the code official shall employ the necessary labor and materials to perform the required repair work as expeditiously as possible.
- E. **Hearing.** Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the Huachuca City Magistrate be afforded a hearing pursuant to provisions of the Magistrate Court.

### **16.25.080 Demolition**

The code official shall order the owner of any premises upon which is located any building or structure, which in the code official's judgement is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the building or structure, to demolish and remove such building or structure; or if such building or structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any building or structure for a period of more than two (2) years, to demolish and remove such building or structure.

## **CHAPTER 16.30 GRAFFITI PREVENTION, PROHIBITION AND REMOVAL**

Graffiti is considered to be obnoxious, contributes to neighborhood deterioration, provides a communication system for gangs and other vandals, damages property, and constitutes a public nuisance and must be abated immediately to avoid the detrimental impact of such graffiti on the Town and its residents, to disrupt the communication system for gangs and other vandals, and prevent the further spread of graffiti.

### **16.30.010 Purpose and intent**

It is the purpose and intent of this Chapter to provide a procedure for the prevention and removal of graffiti from walls, buildings, structures or surfaces on public and private property in order to reduce blight and deterioration within the Town and to protect the public health and safety.

### **16.30.020 Graffiti prohibited**

No person who owns or is in control of any real property within the Town shall maintain, permit or allow graffiti to remain on any sidewalk, building, sign, fence, wall or any other structures or surfaces where the graffiti is visible from the street or other public or private property. Doing so is a Class 1 Misdemeanor.

### **16.30.030 Notice of violation**

If it is determined by the Town that graffiti exists on a property in violation of this Chapter, the Town shall, in writing, notify the owner of the property or responsible person through the issuance of a notice of violation providing a maximum of ten (10) days to abate the graffiti, which notice may be served by certified mail, personal service, or by posting the subject property and publishing the notice in a local newspaper. The Town Police Department shall assist in the enforcement of this Section and may use the Arizona traffic ticket complaint form in lieu of a written notice of violation. Failure to comply is a Class 1 Misdemeanor.

### **16.30.040 Notice of violation – contents**

The notice of violation shall include the following:

- A. Identify the property in violation.
- B. Shall generally describe the location of the graffiti
- C. Direct that the graffiti shall be abated within a stated time period, not to exceed ten (10) days of receipt of the notice.
- D. State that in the event the owner or responsible person fails to abate the graffiti within the time period specified in the notice of violation, the Town shall abate the graffiti and bill the owner or responsible person for the costs thereof.

### **16.30.050 Town abatement**

In the event the owner or responsible person fails to abate the graffiti as required by the notice of violation, the Town or its authorized representative is expressly authorized to enter private property only after going through the Police Department and abate graffiti thereon and bill the owner or responsible person for the costs thereof. In the event the bill is not paid, a statement of the account shall be certified to the Town Manager, who shall collect the same due, together with interest at the rate established by law.

## **CHAPTER 16.35 SLUM PROPERTY**

### **16.35.010 Slum property designation**

- A. If after an inspection, the code official finds that a residential property meets the definition of slum property as outlined in this Title and the Arizona State Statutes, the code official or designee may designate the property a slum property.
- B. Written notice shall be given to the owner or owner's statutory agent that such property has been designated a slum property and shall set forth:
  - 1. The identification of the land where the violation(s) is located, by the street address, if known, and by book, map and parcel number.
  - 2. A statement of the violation(s) in sufficient detail to allow a reasonable person to identify and correct the violation(s).
  - 3. Except for an imminent hazard to life, health or public safety, requiring emergency abatement, the owner shall be given thirty (30) days from service of the notice of designation of slum property to correct the violation(s).
  - 4. The name and phone number of the code official who sent the notice.
  - 5. An explanation that the residential rental property is subject to State statutes, including the appointment of a temporary receiver, annual inspections and payment of inspection costs and penalties.
  - 6. An explanation of the appeal process and specify the date by which any appeal must be filed.

- C. The failure to timely appeal the designation of slum property as slum property shall be deemed an admission that the property is slum property.
- D. If the violation(s) in the notice of designation of slum property is corrected within thirty (30) days from the service of the notice, the Town shall withdraw the designation of slum property. If the violation(s) in the notice of designation of slum property is not corrected within thirty (30) days, the Town may then record a notice of designation of slum property in the Cochise County Recorder's Office.

#### **16.35.020 Service of notice to designate slum property**

- A. The notice to designate slum property shall be served by any of the following methods:
  - 1. By hand delivering a copy of the notice to the owner or owner's statutory agent; or
  - 2. By mailing a copy of the notice to the owner at the last known address or at the address to which the tax bill for the land was last mailed; or
  - 3. By mailing a copy of the notice to the owner's statutory agent.
- B. The notice to designate slum property is deemed served on the date it is hand delivered or, if mailed, on the date it is deposited in the United States mail.

#### **16.35.030 Slum designation appeal**

Within ten (10) working days from the date of the notice of slum designation, the property owner of property designated to be slum property may file with the Town Clerk a written appeal to the Board of Adjustment from such designation. The failure to timely appeal the designation of slum property as slum property shall be deemed an admission that the property is slum property.

- A. The appeal shall clearly show the street address (if known) and the parcel identification number of the property, the date of the notice of slum property designation was issued and the reason for the appeal.
- B. The Board of Adjustment shall, at its next regularly scheduled meeting after receiving the appeal, but no later than sixty (60) days, hear and determine the same and the decision of the Board of Adjustment shall be final.
- C. If no appeal is taken or if the Board of Adjustment affirms the designation of the property as a slum property, the Town may proceed with all inspections and enforcement, charges and other remedies provided by law for slum properties.

#### **16.35.040 Remedies**

- A. If the violations outlined in the notice of designation of slum property is corrected within thirty (30) days from the service of the notice, the Town shall withdraw the designation of slum property.
- B. If the violations are not corrected, the Town may then record a notice of designation of slum property with the Cochise County Recorder's office. A recorded notice shall run with the land. Failure to record a notice shall not affect the validity of the notice as to the persons who receive the notice.

- C. In addition to other remedies provided in this Title for the abatement of slum property, the code official is authorized to seek the appointment of a temporary receiver and recover costs associated with such appointment including the filing of liens as provided by law.
- D. In addition to any other remedy providing for recovery of costs either by law or otherwise specified by this Title or elsewhere in the Huachuca City Municipal Code, the code official is authorized to file costs as provided by law associated with inspections of slum properties in accordance with A.R.S. §33-1904 or its successor sections in the Cochise County Recorder's office and upon such filing such costs shall be a lien on the property.

## **CHAPTER 16.40 PUBLIC NUISANCE**

### **16.40.010 Public nuisance designated**

Anything which is injurious to health, safety or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by a considerable number of persons, or which unlawfully obstructs the free passage or use, in the customary manner, of any stream, public park, square, street, alley, public easement or highway, is designated a public nuisance, and is no less a nuisance because the extent of the annoyance or damage inflicted is unequal. In addition, any violation of this Title that is continuous with respect to time is a public nuisance.

### **16.40.020 Nuisance prohibited**

It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance as defined in this Chapter and Chapter 16.10.

### **16.40.030 Buildings and structures constituting a nuisance**

All buildings and structures are to be maintained so as not to pose a threat to the health and safety of any person or persons. The condition of a building or structure that meets any one (1) or more of the following conditions is considered a public nuisance, is a violation of this Chapter, and subjects the building or structure to abatement as provided in Section 16.50.100 of this Title, including demolition as provided in Section 16.50.100 (F):

- A. The building or structure is vacant and unsecured, regardless whether the building or structure is surrounded in whole or in part by a fence or wall or not.
- B. The building or structure lacks safe and adequate means of exit in case of fire or panic.
- C. The stress in any materials, member or portion thereof, due to all dead and live loads is more than one and one-half (1 ½) times the working stress or stresses allowed in the building code for new buildings of similar structure, purpose or location.

- D. The building, structure or any portion thereof has been damaged by fire, earthquake, wind, flood or any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before the damage and is less than the minimum requirements of the building code for new buildings of similar structure, purpose or location.
- E. The building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become an attractive nuisance to children or a harbor for trespassers or persons committing unlawful acts.
- F. The building, structure, or any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to partially or completely collapse and thereby injure person's or damage property.
- G. Any portion of a building or structure, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half (  $\frac{1}{2}$  ) of that specified in the building code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the building code for such buildings.
- H. Any portion of a building or structure that has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
- I. The walls or other vertical structural members of the building or structure list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
- J. The building or structure, excluding the foundation, has thirty-three (33) percent or more damage or deterioration to the supporting member or members or structural assembly, or fifty (50) percent damage or deterioration to the non-supporting members, enclosing or outside walls or coverings.
- K. The building or structure is infested by rodents, insects or other noxious pests, rendering it uninhabitable.
- L. The building or structure exhibits conditions that present actual or imminent hazards or dangers or is otherwise unsafe for the purpose for which it is being used.
- M. The building or structure, whether erected in accordance with any applicable laws or not, has any non-supporting part, member or portion less than fifty (50) percent, or in any supporting part, member or portion less than sixty-six (66) percent of the following:
  - 1. Strength,
  - 2. Fire-resisting qualities or characteristics, or
  - 3. Weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

- N. A dwelling is unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
- O. The building or structure, because of obsolescence, dilapidated condition, damage, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause.
- P. The building or structure has been found upon reinspection, to be vacant and unsecured, and either
  1. The code official has issued at least one (1) previous abatement order to secure within the preceding twelve (12) months, or more than three (3) abatement orders to secure over any timeframe; or
  2. The code official has secured the building or structure on at least one (1) previous occasion within the preceding twelve (12) months, or more than three (3) times over any timeframe.
- Q. A building or structure or portion thereof remains for any period of time on a site after the demolition or destruction of the building or structure, or normal construction of an unfinished or incomplete building or structure has ceased for a period of more than twelve (12) months.
- R. Slum property.

#### **16.40.040 Other conditions constituting a nuisance**

Except as otherwise permitted by law, each of the following conditions is declared to be a nuisance:

- A. Abandoned property and/or structure.
- B. Maintenance of premises, including buildings, so out of harmony or conformity with the maintenance standards of adjacent properties as to cause an attractive nuisance, blight, complaints and substantial diminution of the enjoyment, use or property values of such adjacent properties.
- C. A building, premises or land regularly used in the commission of a crime.
- D. Animal waste that is not securely protected from insects and the elements, or that is kept or handled in violation of the Town Code or the county; provided, that nothing in this subsection shall be deemed to prohibit the normal use of such animal manure for fertilizing lawns or gardens.
- E. Making, causing or permitting to be made any vibration or artificial illumination of such intensity as to interfere substantially and unnecessarily with the use and enjoyment of any public or private property, or as to constitute a hazard or threat to the public health, safety and welfare of the people of the Town. Nothing herein shall be construed so as to prohibit or cause removal of any lighting system that has been approved and installed in accordance with the Town Code or the Arizona Department of Transportation, or which has been approved and installed in accordance with the sign, subdivision or zoning codes of the Town, or where the person responsible for such artificial illumination is utilizing the same at any exhibition, performance, amusement attraction or event authorized or sponsored by the Town. Outdoor lighting shall comply with zoning requirements outlined in Chapter 18.125 Huachuca City Municipal Code.

- F. Willfully or negligently permitting or causing the escape or flow of water into the public right-of-way in such quantity, in the opinion of the Town, as to cause flooding, to impede vehicular or pedestrian traffic, to create a hazardous condition for such traffic, or to cause damage to the public streets or alleys of the Town through the failure or neglect to properly operate or maintain any water facility or device, including, but not limited to, swimming pools, architectural pools, spas, sprinklers, hoses, pipes, ditches, standpipes, berms, valves and gates.
- G. Any commercial or industrial type equipment, to include the following: tractors, backhoes, bulldozers, trenchers, cranes or other similar equipment parked in an area visible to the public for more than 48 hours in any residential district except when the equipment is being used for construction purposes on the site.
- H. Any putrid, unsound or unwholesome bones, meat, hides, skins, or the whole or any part of any dead animal, butcher's trimmings and offal, or any waste vegetable or animal matter in any quantity, garbage, human excreta, sewage or other offensive substances; provided, that nothing contained in this subsection shall prevent the temporary retention of waste in receptacles in the manner approved by the Cochise County health officer or the Town Code.
- I. A dumping ground or other land or building for depositing litter or debris.
- J. Exterior areas used or maintained as junkyards, except any automobile wrecking yard or other junkyards where the use is allowed by the Town zoning regulations.
- K. The erection, continuance or use of any building, room or other place in the Town that, by noxious exhalations or other airborne irritations, including but not limited to smoke, soot, dust, fumes or other gases, offensive odors or other annoyances, is discomforting or offensive or detrimental to the health of individuals or of the public. Refer to definition of smoke outlined in Chapter 16.10 of this Title.
- L. Burning or disposal or refuse, sawdust or other material in such a manner as to cause or permit ashes, sawdust, soot or cinders to be cast upon land or buildings, the sidewalk, streets, alleys, or highways of the Town, or to cause or permit the smoke, ashes, soot or gasses arising from such burning which is discomforting or offensive to a reasonable person of normal sensitivity, or to constitute a potential hazard to public health, safety and welfare; provided, that this subsection shall not apply where the person responsible for the action has properly obtained a fire permit from the Fire Department.
- M. Allowing fumes and residue from spraying applications to enter the property of another without permission.
- N. To leave or permit to remain in an unsecured location outside on any property, or within any unoccupied or abandoned building, dwelling or other structure or in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator, washer, dryer or other container that has an airtight door or lid, snap lock or other locking device that may not be released from the inside, without first removing such door or lid, snap lock or other locking device from such ice box, refrigerator or container.
- O. An unsecured or abandoned excavation, pit, well or other holes.
- P. Maintaining any privy, vault, cesspool, septic system, sump, pit, accumulated water or like place or thing which is not securely protected from insects or rodents or which is foul, malodorous, or detrimental to the health of the public.
- Q. Any swimming pool, architectural pool or spa that creates a health hazard, is unsecured, harbors insect infestation or presents a deteriorated appearance.

- R. The use, on public or private property, of any form of motor vehicle, motorcycle, mini-bike, dune buggy, motor scooter or other recreational vehicle or conveyance which produces offensive noise or airborne dust sufficient to cause discomfort or annoyance to a reasonable person of normal sensitivity.
- S. Any material growing within or along a public or private right-of-way, alley, access drive, fire lane or utility easement, which by reason of its size, manner of growth or location, constitutes an obstruction, impairs visibility or otherwise endangers any person, improvement or structure.
- T. Plant growth or any other condition that constitutes a fire hazard or encourages infestation of noxious pests.
- U. Any sign, cornice, parapet wall, mechanical screen or fence which has become deteriorated or so unstable that it constitutes a hazard to passers-by.
- V. Any material, structure, fabrication or vehicle placed on, in or near any public or private right-of-way, alley, sidewalk, access drive, fire lane or easement which prevents the free and unimpeded use thereof shall be considered a public nuisance.
- W. Graffiti.
- X. Excessive heat extending beyond property lines.

## **CHAPTER 16.45 ADDITIONAL VIOLATIONS**

### **16.45.010 Additional violations**

- A. No person shall create, maintain or permit a public nuisance as defined in Chapter 16.10 and enumerated in Chapter 16.40 of this Title.
- B. No person shall create, maintain, permit or assist any violation of this Title, or fail to perform any act or duty required by this Title.
- C. No person shall interfere or attempt to interfere with a Town Official investigating or abating a violation of this Title.
- D. No person shall knowingly make a false statement or knowingly mislead a Town Official investigating or abating a violation of this Title.

### **16.45.020 Each day a separate violation**

Each day any violation of any provision of this Title or the failure to perform any act or duty required by this Title continues shall constitute a separate offense upon being cited.

## **CHAPTER 16.50 ADMINISTRATION, ENFORCEMENT AND APPEALS**

### **16.50.010 Authority to enforce**

- A. The code official, as defined in Chapter 16.10 may enforce the provisions of this Title by any one (1) or more lawful means, including but not limited to, voluntary compliance, administrative and civil consent orders, civil enforcement, including injunctive action, criminal enforcement, abatement by administrative procedure, emergency abatement and designation of slum property. The Town may also require restitution. One (1) type of enforcement neither limits nor precludes the Town from pursuing any other type of enforcement.
- B. The code official is authorized to make safe any structure, in whole or part, which in the opinion of the code official, is an imminent threat to the health or safety of any person or persons due to the conditions of such structure. Such work shall be limited to the minimum work necessary to remove the hazard or secure the hazard through boarding or fencing.
- C. When vegetation extends into a street, alley, or public right-of-way in such a manner that it interferes with the free and safe use of the street, alley, or right-of-way, the Town may immediately trim and cut such vegetation as necessary to remove such interference without notice to the property owner and without following the abatement procedures set forth in this code. In addition, the Town may immediately remove any structure or sign from any street or public place. Costs of such removal may be billed to the property owner for reimbursement.
- D. No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the Town who is lawfully engaged in the enforcement or execution of the provisions of this Title.
- E. A violation of this Title is in addition to any other violation of the Huachuca City Municipal Code. The authority of the code official to enforce the provisions of this Title is independent of and in no way limits enforcement of any other violations of the Town Code or of State statutes.

### **16.50.020 Presumptions**

- A. The owner of land, as recorded in the Cochise County Recorder's Office, is presumed to have control over the land and buildings and accessory improvements on the land. If more than one (1) person is recorded as the owner of land, all persons on record are presumed to have joint and several control over the land and buildings and accessory improvements on the land. The occupant residing or operating a business on land or in a building is presumed to have control over the building and land on which it is located. These presumptions shall not prevent the enforcement of this Title against persons other than record owners.

- B. A sign or structure is presumed to be owned by and under the control of:
  - 1. The person whose name, address, email address or phone number appears on it, and/or
  - 2. The person whose business, product or service appears on it, and/or
  - 3. The person whose business benefits by it, and/or
  - 4. The person who owns or controls the land upon which the sign or structure is placed, and/or
  - 5. The person installed or placed it.
- C. All presumptions are rebuttable.

### 16.50.030 Inspections

- A. **Right of entry.** The code official is authorized to make inspections of property to determine compliance with this Title; provided however, inspections for buildings not readily accessible to or readily visible to the public shall be conducted in conformance with A.R.S. 9-833. Except in a situation presenting an imminent hazard to life, health or public safety, building interiors and screened land shall be inspected during the normal business hours of the Town, unless otherwise arranged upon the owner's or occupants' consent, or any administrative or court order.
- B. **Correction of violations required.** If upon inspection, it is determined that violations of this Title or State law exist, the owner or responsible person shall be required to correct all violations within a reasonable amount of time. In the event the building, dwelling, or dwelling unit is unoccupied or becomes unoccupied, future occupancy will be prohibited until a compliance letter is issued by the Town.
- C. **Inspection fees.** Except as expressly provided in this Title or elsewhere in the Huachuca City Municipal Code, no fee shall be charged for an initial inspection to determine the existence of a violation of this Title. Any person who neglects, fails or refuses to correct the violation contained within a notice of violation issued pursuant to Section 16.50.060 may be assessed a re-inspection fee for inspections that occur after the compliance date specified in the notice, where such re-inspection demonstrates the failure to comply. The fee for these re-inspections shall be set by resolution or ordinance adopted by the mayor and council. Failure to pay re-inspection fees within fourteen (14) days of assessment is a violation of this section. Re-inspection fees may be collected in any manner as provided by law, including as a lien against the real property where the violation occurred.
- D. **Appeal of re-inspection fee.** A person may appeal the imposition of a re-inspection fee to the code official through an administrative conference in the manner provided in Section 16.50.110 (B). The administrative conference shall be the only administrative appeal of a re-inspection fee, and no appeal may be made to the Board of Adjustments.

## 16.50.040 Warrants

### A. Issuance – Supporting affidavit.

1. An inspection warrant for residential rental property may only be issued in accordance with state law.
2. An inspection warrant for all other property may be issued upon a showing that the proposed inspection is reasonable and necessary.
3. An abatement warrant may be issued to allow entry upon private property to abate specific conditions in accordance with an abatement order issued by the court.

### B. Refusal to permit inspection or abatement prohibited: penalty. Any person who willfully refuses to permit an inspection or abatement lawfully authorized by warrant issued pursuant to this Chapter is guilty of a misdemeanor.

### C. Return. An inspection or abatement warrant must be returned to the judge by whom it was issued within ten (10) working days from its date of execution.

### D. Execution of inspection or abatement warrants:

1. **Occupied property.** In executing an inspection or abatement warrant, the person authorized to execute the warrant shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property the warrant or a copy thereof upon request. A copy of the warrant shall be left with the occupant or the person in possession.
2. **Unoccupied property.** In executing an inspection warrant or abatement warrant on unoccupied property, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, but may promptly enter the designated property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case, a copy of the inspection or abatement warrant shall be conspicuously posted on the property.

## 16.50.050 Voluntary compliance

The code official may seek voluntary compliance with the provisions of this Title, proactively or reactively, through warnings, letters, notices to comply, compliance orders, or other means designed to achieve compliance in the most efficient and effective manner under the circumstances.

## 16.50.060 Notice of violation

- ### A. Notification.
- If the code official finds a violation of this Title, in the first instance, in any given twelve-month period, other than when the violation presents an imminent hazard to life, health or public safety under Section 16.50.100 (D), the code official may notify the owner or responsible person through the issuance of a notice of violation.

- B. Contents of notice.** A notice of violation issued pursuant to this Title shall include the following information:
1. The identification of the property in violation; street address, legal description or tax parcel identification of the property is sufficient identification of the property;
  2. A statement of the violation(s) in sufficient detail to allow the owner, occupant or responsible person to identify and correct the violation(s);
  3. A statement of the actions required to correct and abate the violation(s). The statement of required action shall direct the owner, occupant or responsible person to perform whatever action is reasonably necessary to correct the violation(s), including cleanup, extermination, repair, rehabilitation, vacation of the building or structure, compliance with Chapter 16.35, and/or demolition;
    - a. If the action required is a repair, the notice shall direct that all required permits be secured for the repair, and that the repair work shall be commenced and completed within a such time, not to exceed sixty (60) days, as the code official determines is reasonable under the circumstances;
    - b. If the action required includes the vacation of a building or structure, the notice shall direct that the building or structure be vacated within a certain time as the code official determines is reasonable under the circumstances;
    - c. If the action required includes demolition and removal of a building or structure, the notice shall direct that the building or structure be vacated within a certain time as the code official determines is reasonable under the circumstances; that all permits required for the demolition be secured within sixty (60) days from the date of the notice; and that the demolition and removal be completed within a certain time as the code official determines is reasonable under the circumstances;
    - d. If the action required is the abatement of a hazardous excavation, the notice shall direct any or all the following actions be completed within a certain time as determined to be reasonable by the code official;
      - i. Securing the excavation by surrounding either the excavation or the property with a fence or other enclosure that is at least five (5) feet in height at all points;
      - ii. Securing the excavation by completely covering the excavation in a manner that prevents any access to the excavation and eliminates any hazard or attractive nuisance;
      - iii. Completely filling the excavation with clean fill.
  4. The stated compliance date shall be a reasonable time period as determined by the code official.
  5. The name and phone number of the code official;
  6. The criminal or civil penalties for failing to correct the violation;
  7. A statement describing the Town's authority to abate the violation(s) should the owner or responsible person not correct the violation(s) within the time specified in the notice, and to assess a lien against the property for the costs of abatement; and

8. A statement advising that any person having legal interest in the property may appeal from the notice in the manner specified in this Title; and that failure to appeal will constitute a waiver of all rights to an administrative determination and hearing of the matter.
- C. **Cost to abate.** In order for the Town to assess the property for the costs of abatement as provided in Section 16.50.100B, the notice shall be given not less than thirty (30) days before the day set for compliance and shall include the estimated cost of such abatement to the Town if the owner or responsible person does not comply.
  - D. **Service of notice.** The notice shall be served upon the record owner and/or the responsible person in the manner describe in subsection (E) of this section. In addition, the notice shall be served on the holder of any legal interest in the property, if known to the code official, and in cases involving an order to vacate, upon any lawful tenant. Any failure to serve any person holding legal interest in the property shall not invalidate any proceedings as to any other person duly served and shall not relieve any such person from any obligation imposed by this Title.
  - E. **Method of service.** Notices given under this Title shall be deemed effective:
    1. On the date when written notice is hand delivered or on the date when written notice is mailed by first class mail, addressed to the property owner or responsible person, except any notice that includes an order to vacate or an order to abate by demolition. Any notice served by first class mail 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.
    2. On the date when written notice is hand delivered or mailed by certified mail return receipt requested, addressed to the property owner or responsible person for any order to vacate or abate by demolition.
    3. Upon notification through one-time public notice published in a newspaper of general circulation and by posting on the property for a period of thirty (30) days, if personal service or mailed service is not practicable.
  - F. **Additional notice; notice not required.** Nothing herein shall preclude the Town from giving additional verbal or written notice at its discretion, but it is not obligated to notify the same person as to a second (or additional) violation(s) which has been the subject of a notice to comply within the previous twelve-month period. If the Town does elect to give any additional notice in any instance, it shall not thereby become obligated to give such additional notice thereafter in the same or other situations.

- G. **Recording a violation.** If there is not compliance with a notice of violation within the time specified in the notice, and no appeal has been properly and timely filed, the code official may record a notice of violation with the office of the Cochise County Recorder. A recorded notice of violation shall describe the property and the violations and shall certify that the owner has been notified. A recorded notice of violation shall run with the land and shall constitute notice, for all purposes of this Title, to all persons or entities thereafter acquiring an interest in the property. Whenever the required corrections ordered thereafter have been completed or the building demolished so that the violations described in the notice have been abated, the code official shall file a new certificate with the Cochise County Recorder certifying that all required corrections have been made and that the property is no longer in violation of this Title. Failure to record a notice of violation shall not affect the validity of the notice as to persons who receive the notice.
- H. **Civil or criminal violation proceedings.** Unless otherwise specifically provided, nothing in this section shall require the issuance of a notice of violation prior to the commencement of civil or criminal violation proceedings.

#### 16.50.070 Transfer of property after notice

- A. **Responsibility upon transfer of property.** The transfer of any and all property interests in any manner, including but not limited to the sale, trade, lease, gift or assignment of any real property, against which a notice of violation has been issued shall not relieve the party(s) served with a notice unless the legal entity assuming an ownership interest in such property, in writing, assumes responsibility for compliance with the notice of violation and a copy of such writing is presented to the code official.
- B. **Fraudulent transfer as a misdemeanor.** Any person who has been served with a notice of violation and who then transfers an ownership interest in the real property against which the notice has been served is guilty of a misdemeanor if the transfer is made without first obtaining a written acceptance of liability from the new owner for the items listed in the notice.

#### 16.50.80 Administrative consent orders, civil and criminal complaints

- A. **Administrative consent orders.** The Town may enter into a written administrative consent order, signed by the Town Manager or code official, with a person accused of violating this Title. The administrative consent order may be enforced as a contract is enforced or by any other lawful means.
- B. **Civil complaints.** The Town Manager or designee, building official, code official, Town attorney and Huachuca City police officers may bring civil complaints under this Title.
1. The complaint shall include a written description and statutory designation of the violation(s).
  2. The Town shall attempt to hand deliver the civil citation to the person accused of violating this Title. If the Town is unable to hand deliver the civil citation, the Town may serve it by certified or registered mail, return receipt requested, or by any means allowed by the Arizona Rules of Civil procedure. If the Town sends a citation via certified or registered mail, an additional copy must also be sent by regular mail.

3. The citation is deemed served on the date it is hand delivered or, if mailed, on the date it is deposited in the United States Mail.
- C. Civil complaints court appearance or failure to appear.**
1. On or before the date specified in the complaint, the defendant shall appear in Municipal Court in person or through an attorney. The defendant shall admit or deny the allegations in the complaint. If the defendant admits the allegations, the court shall enter judgement against the defendant, impose the civil penalties set forth in Section 16.50.090 of this Chapter, require restitution and require the defendant to correct the violation(s). If the defendant denies the allegations, the court shall set the matter for hearing.
  2. If a defendant service with a complaint fails to appear on or before the date specified in the complaint, the court shall enter judgement against the defendant and impose the civil penalties set forth in Section 16.50.090 of this Chapter, require restitution and require the defendant to correct the violation(s).
- D. Criminal complaints.** A Huachuca City police officer, or the Town attorney may bring criminal complaints under this Title.

### **16.50.090 Violations and penalties**

Unless a penalty, remedy or sanction is otherwise specified in this Title, the penalty for a violation of this Title shall be as follows:

- A. The remedies herein are cumulative, and the Town may proceed under one (1) or more such remedies.
- B. Violations of this Title may be prosecuted pursuant to the provisions of this Section.
- C. Each day any violation of any provision of this Title or the failure to perform any act or duty required by this Title exists shall constitute a separate violation or offense.
- D. In addition to the various removal, abatement and cost recovery provisions contained throughout this Title, as well as any other remedies allowed at law, citations for civil and criminal violations of this Title may be filed in the Huachuca City Magistrate Court by the Police Department or the Town Attorney against any owner or responsible person who commits, causes, permits, facilitates or aids or abets any violation of any provision of this Title or who fails to perform any act or duty required by this Title.
- E. Penalties for Title 16 violations may be civil or criminal.
  1. If the violation(s) concerns property used for residential purposes, the fine for a defendant's first citation under this Title shall be fifty dollars (\$50) per violation. The fine for a defendant's second violation under this Title shall be one hundred dollars (\$100) per violation. A defendant's third and subsequent violations under this Title over any timeframe after the second violation shall be classified as a criminal class 1 misdemeanor, punishable as determined by the court, not to exceed \$2,500 fine, six months in jail and three years' probation.

2. If the violation(s) concerns property used for non-residential purposes, the fine for a defendant's first citation under this Title shall be two hundred fifty dollars (\$250) per violation. The fine for a defendant's second violation under this Title shall be five hundred dollars (\$500) per violation. A defendant's third and subsequent violations under this Title over any timeframe after the second violation shall be classified as a criminal class 1 misdemeanor, punishable as determined by the court, not to exceed \$2,500 fine, six months in jail and three years' probation.
- F. In addition to the penalties of Subsection E above, the court shall impose restitution as part of its sentence, to compensate the Town for its costs to enforce this Title and bring a building or land into compliance with this Title. Restitution shall include all costs of abatement, including inspection fees, and prosecution of the case.
  - G. Any continuing violation of this Title constitutes a public nuisance that may be abated by the Town. Imposition of a fine or penalty assessment shall not relieve the owner or responsible person of the responsibility of abatement of the violation(s) or excuse him/her from liability for any and all costs incurred by the Town for abatement.
  - H. In addition to any other abatement procedure provided in this Title, the Town attorney or prosecutor may petition the municipal court for an order permitting the Town to abate any condition that constitutes a violation of this Title. The court shall conduct an informal hearing after written notice, served by personal service or certified mail, to the owner as recorded in the office of the Cochise County Recorder, and any responsible person. The rules of evidence shall not apply to the informal hearing. Each party shall have an opportunity to be heard and present evidence at the hearing. Any failure to appear after notice of the hearing may be deemed a waiver by that party to submit evidence or to be heard. The court's determination on whether a condition or violation of this Title exists shall be based on a preponderance of the evidence. Upon finding that abatement is appropriate the court may order the Town to take any action reasonably necessary to abate the condition that constitutes a violation. The reasonable costs of any abatement permitted by the court order are the responsibility of the owner and may be collected as provided by law.

### **16.50.100 Abatement**

- A. **Court ordered abatement.**
  1. Upon finding a person guilty or responsible for a violation of any provision of this Title, the court shall order such person to perform whatever action is reasonably necessary to correct and abate the violations, including cleanup, board-up, extermination, repair, rehabilitation, vacation of the building or structure, permanently securing or filling the excavation and/or demolition. If more than one (1) person is guilty or responsible for a violation, such persons shall be jointly and severally responsible for completing the abatement.

2. When the court orders abatement pursuant to this Section, the court shall advise a violator that additional fines will be imposed for failure to abate a violation, and that the Town may bring criminal charges for failure to obey an order to abate a violation.

**B. Abatement by the Town**

1. In addition to ordering abatement of a violation as provided in Subsection A above, upon finding a person guilty or responsible for a violation of any provision of this Title, the court may issue an order authorizing the Town to perform whatever action is reasonably necessary to correct and abate the violation, including cleanup, board-up, extermination, repair, rehabilitation, vacation of the building or structure, disconnection of utilities, permanently securing or filling an excavation, and/or demolition. Town personnel can perform the abatement work or hire appropriate persons or companies to perform such work.
  - a. The reasonable costs of any such abatement shall be the responsibility of the person found guilty or responsible of the violation. If more than one (1) person is guilty or responsible for a violation, such persons shall be jointly and severally responsible for the costs of the abatement.
  - b. The Town shall pay the cost and expense of such abatement from any appropriation made available for that purpose and shall prepare a statement of cost, plus five (5) percent incidental cost of abating the violation. The statement shall be mailed to the owner, the owner's statutory agent or other responsible party.
  - c. The statement of cost shall specify the date the payment is due to the Town.
  - d. If payment is not made by the date specified in the statement of cost, the Town shall place a lien on the land in the amount of the statement.
2. The Town may make the costs of an abatement an assessment on the property that is the subject of the violation where all the following are true:
  - a. The case was initiated by the service of a notice of violation pursuant to Section 16.50.60 of this Title;
  - b. The owner or responsible person failed to comply with such notice within the specified timeframe; and
  - c. The notice included the estimated cost of such abatement to the Town if the owner or responsible person did not comply.
3. Upon commencement of action on the property or after mailing the statement of account to the owner or responsible person, the Town shall assess the property for the cost of work performed, including actual costs of any additional inspection and other incidental connected costs, and for associated legal costs for abatement or injunction and may pursue any or all means for recovery of cost if the assessment is not paid. If the assessment is paid, the Town shall remove the assessment.
4. Prior assessment or assessments for the purposes provided for in this Title shall not be a bar to subsequent assessment or assessments and any number of liens or assessments on the same parcel may be enforced in the same action.

5. An assessment made pursuant to this section is prior and superior to all other liens, obligations, mortgages or other encumbrances, except liens for general taxes.
6. Any liens or assessments filed with the Cochise County Recorder pursuant to previous provisions of this chapter or any similar chapter shall remain in effect under the same terms and conditions that existed at the time of recording.
7. If the code official observes a violation(s) of Section 16.15.020 (A), (B), (C), (D) or Sections 16.15.030 (A), (B), (C), (D), (E) and serves a written notice of violation(s) pursuant to Chapter 16.50.060 and the violation(s) has not been completely abated within the timeframe specified, then the violation is presumed to constitute a health or fire hazard or a public nuisance. The Town may then go upon the property and abate the violation(s), assess the owner, occupant or responsible party the cost of the abatement, and record a lien on the land for assessment. Town personnel can perform the abatement work or hire appropriate persons or companies to perform such work.
  - a. Following abatement, the Town shall prepare a statement of the cost of abating the violation(s) of this Title, plus five (5) percent incidental cost of abating the violation.
  - b. The statement shall be mailed to the owner, the owner's statutory agent or other responsible party at the address used to service the notice of violation. If more than one (1) person is responsible for the violation(s), such persons shall be jointly and severally responsible for the payment of the costs or expenses of the abatement.
  - c. The payment may be in addition to any civil or criminal penalty imposed pursuant to this Town Code.
  - d. The statement shall set forth:
    - i. The statement of cost is an assessment upon the land from which the Town abated the violation(s).
    - ii. The payment of the statement of cost shall be made by the date specified in the statement of cost.
    - iii. If payment is not made by the date specified in the statement of cost, the Town shall place a lien on the land in the amount of the statement.
    - iv. The appeal procedures, if any.

C. **Temporary abatement.** If it is determined that a nuisance as provided in Section 16.40.030 is a hazard to the public safety and health, the code official may declare such building or structure a hazard. After notice is communicated to any owner of record or responsible person to secure the structure and the owner does not secure the building or structure to Town specifications, the hazard may be summarily abated by the Town through boarding. The Town may also post both the building, structure and exterior premises with signs to provide reasonable notice prohibiting entry (i.e., "No Trespassing" signs). Any and all charges and costs arising from the Town taken action to secure the structure shall be charged to the owner or responsible property. If unpaid, the charges and costs shall be a lien against the real property containing such structure.

- D. **Emergency Abatement.** Notwithstanding any other provision of this Title if, in the opinion of the code official, the conditions at a property constitute an imminent hazard, the code official may order immediate abatement of the hazard without notice. Such abatement of the imminent hazard shall be limited to the minimum work necessary to remove the hazard and may include disconnection of utilities.
1. The Town shall pay the cost and expense of such abatement from any appropriation made available for that purpose.
  2. A lien shall be recorded with the Cochise County Recorder's Office and shall address the same costs and procedures identified in Subsect (B) above Abatement by the Town.
  3. Whenever the code office find that any building or structure contains an imminent hazard or health hazard, the code official may declare such building or structure unfit for human occupancy and order it to be vacated or to remain vacant. A structure declared unfit for human occupancy and ordered vacated or to remain vacant under the provisions of this Title shall not be leased, rented or occupied and the utilities cannot be reconnected until it has been inspected and deemed fit for occupancy by the Town. The Town shall reinspect, for the purpose of re-occupancy, within three (3) business days of the receipt of a written request by the owner.
  4. Fire department suppression forces are responsible for emergency operations related to fire conditions. In any case involving fire conditions at a building or structure, fire suppression forces shall be responsible for fire suppression and structure control until such time as the fire is fully extinguished. After the fire conditions are fully extinguished, and after any necessary fire cause investigation, fire suppression forces shall transfer control and responsibility for the building or structure to the building official or other appropriate code official. After this transfer, all subsequent enforcement actions, such as securing the structure, restoring utilities, or ordering demolition, as well as all follow up actions such as cost recovery, shall be the responsibility of the building official or code official. After the transfer of responsibility fire cause investigators shall retain authority over and responsibility for investigation of the fire causation.
- E. **Structures posted as dangerous.** Whenever the code official has determined that a building or structure is unfit for occupancy and orders the building or structure to be vacated, the code official shall post a written notice at or upon each exit of the building or structure. The notice shall be in substantially the following form:
- DO NOT ENTER. UNSAFE TO OCCUPY
- It is unlawful to occupy this building or structure, or to remove or deface this notice.
- F. **Abatement by demolition.** Abatement by demolition shall be ordered only where repair of the structure is unreasonable or impracticable, and demolition and removal of a structure or building is necessary to correct and abate a violation. Any action involving the demolition of a building or structure shall be commenced by issuing a notice of violation to the Owner and any responsible person in accordance with the provisions of Section 16.50.060.

## 16.50.110 Administrative appeal

- A. **Availability of administrative appeal.** The provisions of this Section, which permit administrative review of a notice of violation, only apply to: 1) Violations of Chapter 16.20 Building Maintenance Standards; 2) Violations of Chapter 16.25 Unsafe Structures and Equipment; 3) Designations of slum properties pursuant to Chapter 13.35; 4) Imposition of a re-inspection fee for the failure to comply with a notice of violation; 5) Violations of this Title wherein the Town seeks the recovery of costs through the imposition of an assessment as provided in Sections 16.50.100(B). No administrative appeal is available in a case involving a pending or adjudicated court proceeding.
- B. **Administrative conference.** An appeal shall be made to the code official in the following manner:
1. The applicant shall file a written appeal on the form provided by the code official and accompanied by a non-refundable fee, as determined by separate ordinance, within ten (10) days after the date of service of the notice.
  2. The appeal will be heard by the code official within ten (10) days at a regular, specified time.
  3. The code official may use a hearing committee consisting of such staff as the code official deems appropriate or other technical persons to advise the code official on an administrative appeal.
  4. The applicant shall provide adequate information to fully describe the conditions in question.
  5. The applicant may, but is not required to, meet personally with the code official.
  6. If the code official denies an appeal made under this section, the applicant must comply with the decision of the code official or may appeal to the Board of Adjustment according to sub-section D below.
  7. Failure to file an appeal in accordance with the provisions of this Section constitutes a waiver of the right to an administrative conference. Additionally, any person who appeals directly to the Board of Adjustment, pursuant to sub-section D below waives the right to an administrative conference.
- C. **Modifications.** The code official may grant a minor variance to the provisions specified in this Title when there exists an unusual or unreasonable hardship resulting from a literal interpretation of this chapter. The code official shall first find that a special individual hardship makes the strict application of this chapter impractical, and the variance is in conformity with the intent and purpose of this Title, and that the variance does not lessen health, life safety and fire safety requirements or any degree of structural integrity. The details of actions granting variances shall be recorded and maintained by the code official.
- D. **Appeals to the board of adjustment.**
1. An owner or responsible person who is not or was not a party to a pending or adjudicated court proceeding involving a request for court ordered abatement of the violation (hereinafter, the appellant) may appeal a notice of violation or slum designation to the board of adjustment (hereinafter, the board), when it is claimed that:

- a. Substantive errors exist in the notice of violation or the slum designation.
  - b. The method or schedule for correcting the violation as set forth in the notice of violation or the slum designation is unreasonable or arbitrary.
2. An owner or responsible person whose relationship with the property existed at the time of the recording of an assessment, and who is not or was not a party to a court proceeding which has established or may establish the amount of an assessment, may appeal the amount of the assessment for abatement to the board.
3. The appellant shall prepare the appeal in a written application as follows:
  - a. The appellant shall file a written appeal on the forms provided by the code official and accompanied by a non-refundable fee, as determined by separate ordinance.
  - b. The appellant shall provide adequate information to fully describe the conditions in question.
  - c. The application for appeal shall contain each appellant's signature and mailing address to which the decision of the board may be mailed.
  - d. The appellant shall provide a brief statement describing the legal interest of each of the appellants in the property involved in the proceeding.
  - e. The appellant shall verify by declaration under penalty of perjury the truth of the matters stated in the application
  - f. The appeal shall be filed within thirty (30) days from the date of the service of the notice of violation or notice of designation as a slum property; provided, however, that if the building or structure is in such condition as to make it an imminent hazard and is posted and vacated in accordance with Section 16.50.100 (D) of this Title, an appeal shall be filed within ten (10) days from the date of the service of such notice.
4. Except for vacation orders made pursuant to Section 16.50.100 (D), the timely filing of an appeal shall act as an automatic stay of enforcement of the notice of violation until the appeal is finally determined by the board. The filing of an appeal does not stay enforcement of any notice or order, or any provision thereof, where the notice or order includes an order to vacate.
5. As soon as practicable after receiving the written appeal, the board shall fix a date, time and place for the hearing of the appeal. Such date shall not be less than ten (10) days nor more than sixty (60) days from the date the appeal was filed. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing to each appellant, either by causing a copy of the notice to be delivered personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal application.
6. Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of the right to an administrative hearing of the appeal and adjudication of the notice of violation or notice of designation as a slum, and such person shall be stopped to deny the validity of any order or action of the Town which could have been timely appealed.

7. The board shall decide any appeal immediately after the hearing, or within a reasonable time thereafter, but in no event shall the board keep an appeal under consideration for more than five (5) days after the hearing. The board shall render its decision in writing, and the decision of the board shall be filed with the Town Clerk, with a copy to the appellant or applicant.
8. The decision of the board is final. No further appeal is available to Town or County boards or officials. In cases involving the designation of a property as a slum, persons aggrieved by decisions of the board may appeal the decision pursuant to A.R.S. Tit. 12, Ch. 7 Art.6 or pursuant to successor provisions relating to judicial review of administrative decisions. In all other cases, persons aggrieved by decisions of the board may apply to superior court for relief in accordance with the Arizona Rules of Procedure for Special Actions. In the absence of a court order, the filing of an appeal or special action will not stay the enforcement.

**E. Powers, duties and responsibilities of the board.**

1. **Appeals.** On an appeal, the board may affirm, reverse or modify the notice of violation or notice of designation of a slum. In the event that the board modifies the notice, the following limitations and procedures shall apply:
  - a. If the appeal is taken on the grounds that the amount of time for correction of the violation given in the notice of violation is unreasonable, upon a showing by the appellant that the time is unreasonable, and upon a satisfactory showing by the appellant that there is a reasonable probability that the appellant will be able to correct the violation by the granting of additional time, the board may grant up to an additional ninety (90) days to correct the violation. The board may permit Town staff to grant additional time of up to ninety (90) days if during the initial time extension, the appellant has substantially complied with any plan or timetable approved by the board.
  - b. If the appeal is taken on the grounds that the method to correct the violation as specified in the notice of violation is unreasonable, the board may approve an alternate method of correction as long as the purposes of this Title are fulfilled.
  - c. In the event the appeal is taken on the grounds that the cost of the abatement is unreasonable, the board may affirm, modify or reverse the lien or assessment amounts resulting from the abatement for good cause shown.
  - d. If the appeal is taken on the grounds that an order to vacate is unreasonable or arbitrary, the board may affirm, reverse or modify the order to vacate.
2. **Adoption of rules.** The board may adopt rules necessary to carry out the duties and responsibilities imposed upon it by this section. Such rules shall not be inconsistent with the provisions of this Title or the Charter or Code of the Town of Huachuca City.

## **CHAPTER 16.55 LIABILITY, CONFLICTS, SEVERABILITY**

### **16.55.010 Liability**

- A. The board, manager, code official, or any employee charged with the enforcement of this Title, acting in good faith and without malice for the Town in the discharge of the duties required by this Title or other pertinent law or ordinance, shall not be personally liable for damages that may accrue to the persons or property as a result of an act or by reason of an act or omission in the discharge of such duties. A suit brought against said board, manager, code official or employee because of such act or omission performed in the enforcement of any provisions of this Title or other pertinent laws or ordinances shall be defended by the Town until the final termination of the proceedings, and any judgement resulting therefrom shall be assumed by the Town.
- B. This Title does not relieve from or lessen the responsibility of any person owning, operating or controlling any property, premises, building or structure for any damages to persons or property caused by defects, nor shall the Town be held as assuming any such liability by reason of the inspections authorized by this Title.

### **16.55.020 Conflict of ordinances**

- A. In any case where a provision of this Title is found to be in conflict with a provision of any zoning, building, housing, fire, safety or health ordinance or code of the Town existing on the effective date of this Title, the provision/s which establishes the higher standard for the protection and preservation of public health and safety shall control.
- B. In cases where two (2) or more provisions of this Title should conflict, the most stringent or restrictive shall prevail.
- C. This Title is not intended to repeal, abrogate, annul or in any way impair or interfere with existing provisions of other laws or ordinances, except those specifically repealed by this Title.

### **16.55.030 Severability**

If a provision of this Title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Title that can be given effect without the invalid provision or application, and to this end the provisions of this Title are severable.

## CHAPTER 16.60 FORECLOSURE/VACANT PROPERTY REGISTRY

### 16.60.010 Purpose and Intent

It is the purpose and intent of this Chapter to establish a registration program to identify and regulate foreclosures and vacant properties with the Town. Furthermore, the intent of the registration program is to provide a mechanism to protect and preserve neighborhoods and the commercial district within the Town from becoming unsightly and blighted due to the lack of adequate maintenance of foreclosures and vacant properties.

### 16.60.020 Definitions

For the purpose of this chapter, the following definitions shall apply:

**Foreclosure(s):** Any property that is vacant and meets one or more of the following criteria:

1. Is under a current notice of default with any foreclosing entity and/or notice of trustee's sale;
2. Is subject to a current foreclosure action;
3. A finding of foreclosure has been issued relative to the property;
4. Has been the subject of a foreclosure where the title was retained by the beneficiary of a deed of trust involved in the foreclosure;
5. Is owned by a foreclosing entity; or
6. Has been transferred via a deed in lieu of foreclosure.

**Foreclosing entity:** An entity holding a note secured by a mortgage, an entity holding a lien recorded with Cochise County Recorder's office, a non-government entity that holds an interest in delinquent property taxes, an entity that takes property via a deed in lieu of foreclosure, an entity that has purchased a property from a sheriff's sale, a government entity that accepts property as a result of a government insured mortgage or loan.

**Owner:** Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

**Property:** Any unimproved or improved real property or portion thereof, situated in the Town including any house, manufactured home, mobile home, building or other structure that may be located on the property regardless of condition.

**Vacant:** Any property, building, manufactured home, mobile home or structure, or any part thereof that are not presently occupied by persons lawfully entitle thereto. It does not include any property, building, manufactured home, mobile home or structure that is unoccupied by reason of the temporary absence of lawful occupants who intend to return and resume occupancy, provided such absence does not exceed four (4) months within a year.

### 16.60.030 Applicability

The provisions of this Chapter shall apply to all property within the Town, to include all residential and commercial property. The requirements and penalties in this Chapter are in addition to and shall not be considered in conflict with any and all other requirements of this Title and the Huachuca City Municipal Code. Nothing within this Chapter shall be construed to limit the foreclosing entity or the owner of vacant property to comply with and adhere to any and all building, housing, health, code enforcement and zoning ordinances or any other local, state and federal laws.

### 16.60.040 Authority to implement

By means of contract, the Town may assign and delegate to another person or entity the authority and responsibility to effect, collect and maintain registrations and registration fees authorized under this chapter.

### 16.60.050 Registration requirements

- A. **Foreclosure property.** Any foreclosing entity that files a foreclosure action, accepts a deed in lieu of foreclosure, buys real property at a sheriff sale, or accepts property as a result of a government insured mortgage or loan shall, within fifteen (15) days after property becoming vacant, register the foreclosure property on forms to be provided by the Town. In connection with that registration, the foreclosing entity shall also designate a property manager to inspect, maintain and secure the property. The designated property manager must be located within Arizona, and must be:
  - 1. A duly licensed property management company or property preservation company;
  - 2. A department or section of a foreclosing entity that is devoted to property management or preservation; or
  - 3. A service provider specifically employed by a mortgagee to provide property management or preservation within the Town.
- B. **Vacant property.** Any owner of vacant property, whether residential or commercial, shall, within fifteen (15) days after property becomes vacant, register the vacant property on forms to be provided by the Town. In connection with that registration, if the owner does not reside within Arizona, the owner shall also designate a local property manager or agent who would be responsible to inspect, maintain and secure the property.
- C. **Each property registered separately.** Each property having a separate Parcel Identification Number, as designated in the official records of the Cochise County Assessor office, shall be registered separately on forms provided by the Town.
- D. **Required information.** It is the responsibility of the foreclosing entity or the owner of vacant property making the initial application for registration, and any subsequent applications for registration, to provide the following required information:

- A. The direct name, mailing address, and telephone number of the foreclosing entity or owner of the vacant property;
- B. The name, address, telephone number and email address of an authorized agent for the foreclosing entity of the vacant property to receive notices of code violations, to receive process in any court and to receive notice of enforcement proceedings in connection with the enforcement of this Title;
- C. The name, address, email address and a twenty-four (24) hour contact telephone number of the local property manager or designated agent responsible for the security and maintenance of the property.
- D. The period-of-time the vacant building is expected to remain vacant and a plan and timetable for returning the building to appropriate occupancy or use and/or for demolition of the building.
- E. **Registration renewal.** The registration of the property shall remain valid for twelve (12) months. Upon the expiration of the registration period, the foreclosing entity or the owner of vacant property shall complete another application to renew the registration of the property and pay an additional registration fee. The property registration requirement shall remain until the property is legally occupied; the foreclosure action has been dismissed; the property is purchased, and the deed transferred into the new owner's name.
- F. **Change in registration information.** Any person, firm, partnership, co-partnership, association, fiduciary, beneficiary, lender, corporation or any legal entity that has registered under this Chapter must report any change in registration information required by this Chapter, within ten (10) days of the change.
- G. **Orders requiring registration.** If a foreclosure or vacant property is identified and found not to be registered with the Town as required by this Chapter, orders will be issued requiring the property is registered.
- H. **Posting contact information.** Property shall be posted with the name and contact phone number of the foreclosing entity, owner or designated property manager. The posting shall be no less than eight and one-half inches by eleven inches and shall contain, along with the name and contact number, the words "THIS PROPERTY IS MANAGED BY" and "TO REPORT PROBLEMS OR CONCERNS CALL" or substantially similar wording. The posting shall be placed in a window adjacent to the entry door or attached to the exterior of the entry door. Exterior postings must be made of weather-resistant materials.
- I. **Existing vacant buildings.** Buildings or structures that are vacant property at the time of the adoption of these provisions must register within thirty (30) days of the date these provisions take effect.

### 16.60.060 Fees

Registration fees shall be set by the Town Council by resolution from time to time.

- A. All registration fees shall be paid as specified by the established fee schedule for each property subject to the provisions of this Chapter. Fees are non-refundable and shall not be prorated.
- B. In the case where the foreclosing entity or owner of vacant property has failed to register, there shall be assessed any added cost incurred by the Town in having to determine ownership, which may include, but is not limited to a title search.
- C. The Town shall have the authority to collect any additional fees owed to the Town at the time the property is registered. Payment in full of all the following fines, fees and debts relating to the vacant property being registered that are owed to the Town and are currently due or past due must be paid prior to obtaining registration:
  - 1. Outstanding water, sewer, trash or landfill bills;
  - 2. All charges for mowing, cleanup, weed or debris removal; and
  - 3. All charges for securing of the property, including locks and boarding.
  - 4. Any fines, penalties or debts of any sort arising from provisions of this Title, including blight violations.
- D. All fees hereunder that remain unpaid after fourteen (14) days written notice to the foreclosing entity, owner or property manager shall be assessed against the property as a lien and included on the tax roll.
- E. All delinquent fees shall be paid by the foreclosing entity or owner of vacant property prior to any transfer of an ownership interest in the property.

#### **16.60.070 Evidence of vacancy**

A structure or property will be presumed vacant when any condition that, on its own or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions include, but are not limited to: overgrown or dead vegetation; accumulation of newspapers, circulars, flyers or mail; past due utility notices or disconnection of utilities; accumulation of trash, junk or debris; the absence of window coverings such as curtains, blinds or shutters; the absence of furnishings or personal items; statements based on observations by neighbors, passersby, delivery agents or government employees that the property is vacant.

#### **16.60.080 Fire damaged property**

If a building or structure regulated hereunder is damaged by fire, the owner has ninety (90) days from the date of the fire to apply for a permit to start reconstruction or demolition. Failure to do so will result in the property being deemed vacant property and also subject to the requirements of this Title.

### **16.60.090 Inspection requirements**

Upon registration, an exterior property maintenance inspection shall be scheduled with the Code Official. A notice of violation or orders to correct may be issued for any violations of this Title or the Huachuca City Municipal Code identified during an inspection. Additionally, express authorization shall be provided for the Town employees, and contractors designated by the Town, to enter upon the property for the purpose of ensuring compliance with this chapter. Regular inspections of the property must be performed by the foreclosing entity or their property manager and an owner of vacant property or the owner's designated agent, to ensure compliance with this Chapter, Title all all other applicable laws.

### **16.60.100 Monitoring of property**

- A. The code official shall inspect and monitor the condition of any property required to be registered under this Chapter, including building, water, fire, police/public safety, and any other inspections deemed necessary by the code official.
- B. The code official or designee shall have the authority to require foreclosure entity, owner or property manager to implement additional maintenance, security, or other measures not specified in this Chapter as may be reasonably required to prevent further decline or blight of the vacant property.
- C. Vacant property that is left open and/or accessible shall be subject to entry by the code official in order to ensure that the property has not become an attractive nuisance and to ensure that the property is locked and/or secured. The foreclosing entity or owner of the vacant property subject to the provisions of this Chapter, which property is found open or unsecured, shall be responsible for a securing fee as set by the Town Council to offset the costs incurred by the Town in securing the property if the owner, property manager or designated agent cannot be contacted or does not secure the property within twenty-four (24) hours.

### **16.60.110 Maintenance requirements**

It is declared a public nuisance for any foreclosure entity, owner, property manager or designated agent to cause, permit or maintain any property condition contrary to the provisions of this Section. The owner, foreclosure entity or individual responsible for the care and control of the property shall perform regular weekly inspections of the property to assure compliance with the requirements of this Section, and shall allow access to the property by the Building Official or Code Official for the purpose of inspection and in the case of emergency. Properties subject to this Chapter shall be maintained in a safe and sanitary manner, in accordance with this Title and Huachuca City Municipal Code, including, but not limited to:

- A. Being kept free of overgrown vegetation, including grass and weeds exceeding twelve (12) inches in height;
- B. Being kept free of any accumulation of newspapers, circulars, flyers, trash, junk, debris, litter, buildings materials, discarded personal items, furniture, appliances or any other issue that gives the appearance of vacancy;

- C. Being kept free of any infestation of rodents, insects or vermin. The owner, property manager or designated agent shall immediately upon notice undertake an expedient means of extermination of such nuisances. Such extermination shall be certified by an approved exterminator and proof of the same provided to the code official.
- D. Being sure the area between the sidewalk space and the roadway (whether the sidewalk is installed or not) is free from vegetation growth, obstructions, tripping hazards, garbage, litter and debris.
- E. Being sure that no yard area of an unoccupied or vacant building, or the unoccupied or vacant building itself, is utilized for the storage of any materials unless said materials are being used on site for the renovation, construction, repair or demolition of said building.
- F. Being sure property is free of graffiti, tagging or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior of the building or structure affected.
- G. Being sure the appearance of exterior of the premises and the condition of buildings and accessory structures reflects the level of maintenance in keeping with the standards of the neighborhood in such that the appearance of the premises and structures do not constitute to a blighting factor for adjoining property owners or an element leading to the progressive deterioration and downgrading of the neighborhood with the accompanying diminution of property value.
- H. Being sure every foundation, exterior wall and exterior roof shall be weathertight, watertight and rodent proof, shall be kept in sound condition and good repair and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.
- I. Being sure all building appurtenances are securely attached so as not to cause a blighting condition, including, but not limited to, gutters, downspouts, shutters, railings, guards, steps, awnings, canopies, signs, lights fixtures and fire escapes.
- J. Being sure pools, spas, and other water features are kept in good working order or winterized to ensure that the water remains clear and free of pollutants and debris, or drained and kept dry and free of debris, and complies with the minimum security fencing, barrier and maintenance requirements outlined in this Title
- K. Being sure detached signs and lighting systems are structurally sound and maintained so as not to cause a blighting condition or removed.
- L. Being sure fencing and retaining walls are structurally sound. Any fence or wall with broken or hanging components shall be repaired, straightened or removed.
- M. Being sure utilities are properly disconnected or connected and in proper working order.
- N. Being sure all perishables are removed from the interior of buildings and structures.

### **16.60.120 Security requirements**

Properties subject to this Chapter shall be maintained in a secure manner, in accordance with this Title and Huachuca City Municipal Code, so as not to be accessible to any unauthorized persons. Secure manner includes, but not limited to:

- A. Being sure buildings and structures are secured in such a manner so as not to be accessible to unauthorized persons. Doors, windows, and other openings that make the property accessible must be closed and locked so that a key, keycard, tool or special knowledge is necessary to gain access. Broken windows must be repaired or replaced within fourteen (14) days. Boarding up of open or broken windows is prohibited except as a temporary measure for no longer than fourteen (14) days; and
- B. In the case of damaged or broken fences, gates, pool barriers and other openings, the unsecured opening must be repaired per provisions of this Title.

#### **16.60.130 Abatement and demolition**

Whenever a property is deemed abandoned or vacant pursuant to the terms of this Title and is not maintained pursuant to the terms of this Title and the Huachuca City Municipal Code, the code official may order the abatement of the violation or any other action that may be required including, but not limited to, demolition. Any abatement action shall be conducted in accordance with the provisions of this Title and the Huachuca City Municipal Code. The cost of any action taken by the Town shall be charged against the real estate upon which the structure or violation is located and shall be a lien upon such real estate.

#### **15.60.140 Violations and enforcement.**

- A. It is unlawful for a responsible person under this Chapter to violate any provision of this Title.
- B. The provisions of this chapter shall be enforced by the designated code official of the Town.
- C. The code official who observes a violation of any of the provisions of this chapter shall take one or more of the actions described below in order to resolve the violation:
  - 1. Issue a notice and order to comply to the responsible person.
  - 2. Prepare a request for a long form criminal complaint. The request will be forwarded to the Town attorney for approval. The Town attorney will file the complaint with the Town of Huachuca City Municipal Court against the foreclosing entity, owner or any other party as deemed appropriate by the Town attorney. The Town attorney may reduce criminal violations to petty offenses or defer prosecution in the interest of justice.
  - 3. A notice and order to comply is not required if the responsible person is the same and the person has been charged criminally within the previous twenty-four months for the same or similar code violation.
  - 4. Police officers may cite any violation of this chapter as a criminal offense without notice by using the Arizona traffic ticket complaint form for enforcement.
- D. In addition to any enforcement remedy otherwise available, the code official has authority to require a responsible person to implement additional maintenance and/or security measures as may be reasonably required to prevent further decline of the property.

### **16.60.150 Penalty**

- A. Failure to file the required registration form, or failure to maintain the registration form containing current information shall be a civil infraction and subject to a \$100 fine. Each day that a registration form is not on file and each day that an owner or foreclosing entity fails to maintain current information in a registration form shall be considered a separate offense.
- B. Failure to make required repairs, or a second or subsequent offense of any other requirement of this Chapter shall be a misdemeanor subject to prosecution.

### **16.60.160 Appeals**

Any person directly affected by a decision, notice or order under this Title shall have the right to appeal to the Board of Adjustment, provided that a written application for appeal and fee is submitted within fifteen (15) days from the date of the notice or order. An application for appeal shall be based on a claim that the true intent of this Title or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Title do not fully apply, or the requirements of this Title are adequately satisfied by other means. Appeals heard by the Board of Adjustment shall be submitted on forms provided by the Town.

### **16.60.170 Joint and several liability**

Any owner, person in control, foreclosing entity, or subsequent owner of property for which a notice of violation is issued to correct violations shall be jointly and severally liable for the costs incurred by the Town for the abatement of violations on the property. Joint and several liability shall be attributed to each entity in the chain of title from the date of issuance of orders forward.

### **16.60.180 Waived inspection and maintenance**

A foreclosing entity's obligation under this chapter regarding inspection and maintenance of a vacant property may be waived by the Town if the foreclosing entity demonstrates to the satisfaction of the Town that the circumstances set forth below exist:

- A. The mortgage documents either expressly prohibit the mortgagee and its agents from entering the property for purposes required herein or do not authorize entry in order to protect the mortgagee's interests in the property; and
- B. There is a reasonable possibility, based on articulable evidence, that:
  - 1. The obligor under the mortgage or an authorized occupant of the premises will report the entry as a trespass; or
  - 2. The obligor under the mortgage will assert against the mortgagee, whether in a foreclosure proceeding or otherwise, a claim that the entry is a breach of the mortgage documents or constitutes an illegal or unauthorized entry on the property.

### **16.60.190 Severability**

If a section, subsection, sentence, clause or phrase of this chapter is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter.