

REFERENCE TITLE: **rubbish; removal; penalties**

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

HB 2719

Introduced by
Representative Petersen

AN ACT

AMENDING SECTIONS 9-499 AND 11-268, ARIZONA REVISED STATUTES; RELATING TO
ILLEGAL DUMPING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 9-499, Arizona Revised Statutes, is amended to
3 read:

4 **9-499. Removal of rubbish, trash, weeds, filth, debris and**
5 **dilapidated buildings; removal by city; costs**
6 **assessed; collection; priority of assessment;**
7 **responsibility of payment; definitions**

8 A. The governing body of a city or town, by ordinance, shall compel
9 the owner, lessee or occupant of property to remove from the property and
10 its contiguous sidewalks, streets and alleys any rubbish, trash, weeds or
11 other accumulation of filth, debris or dilapidated buildings that
12 constitute a hazard to public health and safety. An ordinance shall
13 require:

14 1. Written notice to the owner, the owner's authorized agent or the
15 owner's statutory agent and to the occupant or lessee. The notice shall
16 be served either by personal service or by certified mail. If notice is
17 served by certified mail, the notice shall be mailed to the last known
18 address of the owner, the owner's authorized agent or the owner's
19 statutory agent and to the address to which the tax bill for the property
20 was last mailed. The notice shall be given not less than thirty days
21 before the day set for compliance and shall include the legal description
22 of the property and the cost of such removal to the city or town if the
23 owner, occupant or lessee does not comply. The owner shall be given not
24 less than thirty days to comply. The city or town may record the notice
25 in the county recorder's office in the county in which the property is
26 located. If the notice is recorded and compliance with the notice is
27 subsequently satisfied, the city or town shall record a release of the
28 notice.

29 2. Provisions for appeal on both the notice and the assessments,
30 unless the removal or abatement is ordered by a court.

31 3. That any person that recklessly places or causes to be placed
32 any rubbish, trash, filth or debris on any property not owned or under the
33 control of that person:

34 (a) Is guilty of a class 1 misdemeanor or a civil violation unless
35 that person immediately removes or causes to be removed the rubbish,
36 trash, filth or debris from that property. **NOTWITHSTANDING SECTION**
37 **13-707, THE PENALTY FOR A VIOLATION OF THIS SECTION MAY NOT EXCEED THE**
38 **AMOUNT OF THE MAXIMUM FINE FOR A CLASS 1 MISDEMEANOR AND MAY NOT INCLUDE**
39 **ANY PERIOD OF INCARCERATION.** One hundred percent of any assessed fine or
40 civil penalty shall be deposited in the general fund of the city or town
41 in which the fine or civil penalty was assessed. At least fifty percent
42 of the fine or civil penalty shall be used by the city or town for the
43 purposes of illegal dumping cleanup.

44 (b) In addition to any fine or penalty imposed for a violation of
45 this section, is liable for all costs that may be assessed pursuant to

1 this section for removing, abating or enjoining the rubbish, trash, filth
2 or debris and for all costs incurred by the owner, lessee, occupant or
3 lienholder of the property in the removal and disposal of the rubbish,
4 trash, filth or debris.

5 (c) If required to remove any rubbish, trash, filth or debris
6 pursuant to this section, shall provide the city or town with a receipt
7 from a disposal facility or other documentation evidencing lawful disposal
8 of the rubbish, trash, filth or debris.

9 B. Any person that places or causes to be placed any rubbish,
10 trash, filth or debris on any property that is more than forty acres in
11 size and that is not owned or under the control of that person retains
12 ownership of the rubbish, trash, filth or debris until the person lawfully
13 disposes of the rubbish, trash, filth or debris.

14 C. The ordinance may provide that if any person with an interest in
15 the property, including an owner, lienholder, lessee or occupant, after
16 notice as required by subsection A, paragraph 1 of this section does not
17 remove or cause to be removed the rubbish, trash, weeds, filth, debris or
18 dilapidated buildings and abate the condition that constitutes a hazard to
19 public health and safety, the city or town may remove, abate, enjoin or
20 cause their removal.

21 D. The governing body of the city or town may prescribe by
22 ordinance a procedure for the removal or abatement, and for making the
23 actual cost of the removal or abatement, including the actual costs of any
24 additional inspection and other incidental connected costs, an assessment
25 on the property from which the rubbish, trash, weeds, buildings or other
26 accumulations are removed or abated.

27 E. The ordinance may provide that the cost of removal, abatement or
28 injunction of the rubbish, trash, weeds, filth, debris or dilapidated
29 buildings from any property, and associated legal costs for abatement or
30 injunctions, shall be assessed on the property from which the rubbish,
31 trash, weeds, accumulations or dilapidated buildings are removed, abated
32 or enjoined. **THE ORDINANCE MAY NOT INCLUDE ANY PERIOD OF INCARCERATION**
33 **FOR A VIOLATION OF THIS SECTION BY A PERSON WITH AN INTEREST IN THE**
34 **PROPERTY.** The city or town may record the assessment in the county
35 recorder's office in the county in which the property is located,
36 including the date and amount of the assessment, the legal description of
37 the property and the name of the city or town imposing the assessment.
38 Any assessment recorded after July 15, 1996 is prior and superior to all
39 other liens, obligations, mortgages or other encumbrances, except liens
40 for general taxes. A sale of the property to satisfy an assessment
41 obtained under this section shall be made on judgment of foreclosure and
42 order of sale. A city or town shall have the right to bring an action to
43 enforce the assessment in the superior court in the county in which the
44 property is located at any time after the recording of the assessment, but
45 failure to enforce the assessment by such action shall not affect its

1 validity. The recorded assessment is *prima facie* evidence of the truth of
2 all matters recited in the assessment and of the regularity of all
3 proceedings before the recording of the assessment. The assessment
4 provided for in this subsection shall not be levied against state or
5 federal property.

6 F. Assessments that are imposed under this section run against the
7 property until paid and are due and payable in equal annual installments
8 as follows:

9 1. Assessments of less than ~~five hundred dollars~~ \$500 shall be paid
10 within one year after the assessment is recorded.

11 2. Assessments of ~~five hundred dollars~~ \$500 or more but less than
12 ~~one thousand dollars~~ \$1,000 shall be paid within two years after the
13 assessment is recorded.

14 3. Assessments of ~~one thousand dollars~~ \$1,000 or more but less than
15 ~~five thousand dollars~~ \$5,000 shall be paid within three years after the
16 assessment is recorded.

17 4. Assessments of ~~five thousand dollars~~ \$5,000 or more but less than
18 ~~ten thousand dollars~~ \$10,000 shall be paid within six years after the
19 assessment is recorded.

20 5. Assessments of ~~ten thousand dollars~~ \$10,000 or more shall be paid
21 within ten years after the assessment is recorded.

22 G. An assessment that is past due accrues interest at the rate
23 prescribed by section 44-1201.

24 H. A prior assessment for the purposes provided in this section
25 shall not be a bar to a subsequent assessment or assessments for these
26 purposes, and any number of assessments on the same property may be
27 enforced in the same action.

28 I. This section applies to all cities and towns organized and
29 operating under the general law of this state, and cities and towns
30 organized and operating under a special act or charter.

31 J. Notwithstanding subsection F of this section, for residential
32 property of four or fewer units, a city or town may not require payment of
33 the assessments imposed under this section by the homeowner if the
34 property was serving as a rental and had a tenant during the time of the
35 removal of the rubbish, trash, filth or debris.

36 K. For the purposes of this section:

37 1. "Dilapidated building" means any real property structure that is
38 likely to burn or collapse and its condition endangers the life, health,
39 safety or property of the public.

40 2. "Owner" does not include a state or federal landowner.

41 3. "Property" includes real property and structures on the real
42 property.

1 Sec. 2. Section 11-268, Arizona Revised Statutes, is amended to
2 read:

3 11-268. Removal of rubbish, trash, weeds, filth, debris and
4 dilapidated buildings: removal by county; costs
5 assessed; collection; priority of lien; definitions

6 A. The board of supervisors, by ordinance, shall compel the owner,
7 lessee or occupant of buildings, grounds or lots located in the
8 unincorporated areas of the county to remove rubbish, trash, weeds, filth,
9 debris or dilapidated buildings that constitute a hazard to public health
10 and safety from buildings, grounds, lots, contiguous sidewalks, streets
11 and alleys. Any such ordinance shall require and include:

12 1. Reasonable written notice to the owner, any lienholder, the
13 occupant or the lessee. The notice shall be given at least thirty days
14 before the day set for compliance and shall include the estimated cost to
15 the county for the removal if the owner, occupant or lessee does not
16 comply. The notice shall be either personally served or mailed by
17 certified mail to the owner, occupant or lessee at his last known address,
18 or the address to which the tax bill for the property was last mailed. If
19 the owner does not reside on the property, a duplicate notice shall also
20 be sent to the owner at the owner's last known address.

21 2. Provisions for appeal on both the notice and the assessments.

22 3. That any person, firm or corporation that recklessly places any
23 rubbish, trash, filth or debris on any private or public property located
24 in the unincorporated areas of the county not owned or under the control
25 of the person, firm or corporation:

26 (a) Is guilty of a class 1 misdemeanor unless that person, firm or
27 corporation immediately removes or causes to be removed the rubbish,
28 trash, filth or debris from that property. **NOTWITHSTANDING SECTION**
29 **13-707, THE PENALTY FOR A VIOLATION OF THIS SECTION MAY NOT EXCEED THE**
30 **AMOUNT OF THE MAXIMUM FINE FOR A CLASS 1 MISDEMEANOR AND MAY NOT INCLUDE**
31 **ANY PERIOD OF INCARCERATION.** One hundred ~~per cent~~ PERCENT of any assessed
32 fine shall be deposited in the general fund of the county in which the
33 fine was assessed. At least fifty ~~per cent~~ PERCENT of the fine shall be
34 used by the county for the purposes of illegal dumping cleanup.

35 (b) In addition to the fine that is imposed for a violation of this
36 section, is liable for all costs that may be assessed pursuant to this
37 section for the removal of the rubbish, trash, filth or debris.

38 B. The ordinance may provide that if any person with an interest in
39 the property, including an owner, lienholder, lessee or occupant of the
40 buildings, grounds or lots, after notice as required by subsection A,
41 paragraph 1 **OF THIS SECTION**, does not remove the rubbish, trash, weeds,
42 filth, debris or dilapidated buildings and abate the condition that
43 constitutes a hazard to public health and safety, the county, at the
44 expense of the owner, lessee or occupant, may remove, abate, enjoin or

1 cause the removal of the rubbish, trash, weeds, filth, debris or
2 dilapidated buildings.

3 C. The board of supervisors may prescribe by the ordinance a
4 procedure for such removal or abatement and for making the actual cost of
5 the removal or abatement, including the actual costs of any additional
6 inspection and other incidental costs in connection with the removal or
7 abatement, an assessment on the lots and tracts of land from which the
8 rubbish, trash, weeds, filth, debris or dilapidated buildings are removed.

9 D. The ordinance may provide that the cost of removal, abatement or
10 injunction of the rubbish, trash, weeds, filth, debris or dilapidated
11 buildings from any lot or tract of land located in the unincorporated
12 areas of the county and associated legal costs be assessed in the manner
13 and form prescribed by ordinance of the county on the property from which
14 the rubbish, trash, weeds, filth, debris or dilapidated buildings are
15 removed, abated or enjoined. **THE ORDINANCE MAY NOT INCLUDE ANY PERIOD OF
16 INCARCERATION FOR A VIOLATION OF THIS SECTION BY A PERSON WITH AN INTEREST
17 IN THE PROPERTY.** The county shall record the assessment in the county
18 recorder's office in the county in which the property is located,
19 including the date and amount of the assessment and the legal description
20 of the property. Any assessment recorded after August 6, 1999 is prior
21 and superior to all other liens, obligations or other encumbrances, except
22 liens for general taxes and prior recorded mortgages. A sale of the
23 property to satisfy an assessment obtained under this section shall be
24 made on judgment of foreclosure and order of sale. The county may bring
25 an action to enforce the lien in the superior court in the county in which
26 the property is located at any time after the recording of the assessment,
27 but failure to enforce the lien by such action does not affect its
28 validity. The recorded assessment is *prima facie* evidence of the truth of
29 all matters recited in the assessment and of the regularity of all
30 proceedings before the recording of the assessment. The assessment
31 provided for in this subsection shall not be levied against state or
32 federal property.

33 E. Assessments that are imposed under subsection D of this section
34 run against the property until they are paid and are due and payable in
35 equal annual installments as follows:

36 1. Assessments of less than ~~five hundred dollars~~ \$500 shall be paid
37 within one year after the assessment is recorded.

38 2. Assessments of ~~five hundred dollars~~ \$500 or more but less than
39 ~~one thousand dollars~~ \$1,000 shall be paid within two years after the
40 assessment is recorded.

41 3. Assessments of ~~one thousand dollars~~ \$1,000 or more but less than
42 ~~five thousand dollars~~ \$5,000 shall be paid within three years after the
43 assessment is recorded.

1 4. Assessments of ~~five thousand dollars~~ \$5,000 or more but less
2 than ~~ten thousand dollars~~ \$10,000 shall be paid within six years after the
3 assessment is recorded.

4 5. Assessments of ~~ten thousand dollars~~ \$10,000 or more shall be
5 paid within ten years after the assessment is recorded.

6 F. A prior assessment for the purposes provided in this section is
7 not a bar to a subsequent assessment or assessments for such purposes, and
8 any number of liens on the same lot or tract of land may be enforced in
9 the same action.

10 G. Before the removal of a dilapidated building the board of
11 supervisors shall consult with the state historic preservation officer to
12 determine if the building is of historical value.

13 H. If a county removes a dilapidated building pursuant to this
14 section, the county assessor shall adjust the valuation of the property on
15 the property assessment tax rolls from the date of removal.

16 I. If a person, firm or corporation is required to remove any
17 rubbish, trash, filth or debris pursuant to subsection A, paragraph 3 **OF**
18 **THIS SECTION**, the person, firm or corporation shall provide the county
19 with a receipt from a disposal facility to indicate that the rubbish,
20 trash, filth or debris has been disposed of as required by law.

21 J. For the purposes of this section:

22 1. "Dilapidated building" means any real property structure that is
23 likely to burn or collapse and its condition endangers the life, health,
24 safety or property of the public.

25 2. Occupant does not include any corporation or association
26 operating or maintaining rights-of-way for and on behalf of the United
27 States government, either under contract or under federal law.

28 3. Owner does not include a state or federal landowner.