

1 **CLOSE, TO CLOSE, or CLOSURE.** To remove all owners, tenants, occupants
2 and other persons and animals from the real property, vehicle, or personal
3 property, or a specified discrete portion thereof, and to lock, board, bar, or
4 otherwise close and prohibit all entry, access, and use of the real property,
5 vehicle, or other personal property, or a specified discrete portion thereof,
6 except such access and use as may be specifically ordered by the court for
7 purposes of inventory, maintenance, storage, security, and other purposes.

8 **CONTRABAND.** Any personal property which is illegal to own.

9 **CRIME PREVENTION STANDARDS.** Standards promulgated by the Mayor's
10 designee for the design, management and operation of a property or business
11 that aim to prevent criminal activity.

12 **CRIMINAL STREET GANG.** Any organization, association in fact, or group of
13 three or more persons, whether formally or informally organized, or any
14 subgroup or affiliated group thereof, having as one of its primary activities the
15 commission of one or more criminal acts or illegal acts, which has an
16 identifiable name or identifying sign or symbol and whose members
17 individually or collectively engage in or have engaged in a pattern of gang-
18 related criminal activity.

19 **FLIGHT.** To flee, escape, or leave the place where the public nuisance
20 activity was committed or conducted.

21 **LEGAL OR EQUITABLE INTEREST OR RIGHT OF POSSESSION.** Every legal
22 or equitable interest, title, estate, tenancy, or right of possession recognized
23 by law and equity, including freeholds, life estates, future interests,
24 condominium rights, time-share rights, leaseholds, easements, licenses, liens,
25 deeds of trust, contractual rights, mortgages, security interests, and any right
26 or obligation to manage or act as agent or trustee for any person holding any
27 of the foregoing.

28 **MAYOR'S DESIGNEE.** The person(s) or entity(ies) appointed by the Mayor to
29 enforce this ordinance.

30 **PARCEL.** Any lot or other unit of real property or any combination of
31 contiguous lots or units owned by the same person as defined herein.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **PERSON.** Natural persons and every legal entity whatsoever, including sole
2 proprietors, corporations, limited liability companies, partnerships, limited
3 partnerships, and associations.

4 **PERSONAL PROPERTY.** All property of every kind and nature whatsoever
5 including cash, vehicles, animals, intangible property and contraband, but not
6 including real property of any kind.

7 **PROPERTY.** Property of all kinds, including real property and personal
8 property as defined herein.

9 **PUBLIC NUISANCE.**

10 (A) Any parcel of real property, commercial or residential, any personal
11 property, or any vehicle on or in which any of the following illegal activities
12 occurs, or which is used to commit, conduct, promote, facilitate, or aid the
13 commission of or flight from any of the following activities. For purposes of
14 this section, the illegal activity shall have the same definition as that contained
15 in the section of the New Mexico Statutes Annotated (NMSA), as amended, or
16 Chapter 12, the Criminal Code of the Revised Ordinances of Albuquerque, New
17 Mexico, 1994, as amended, listed after the illegal activity:

- 18 (1) Prostitution, 30-9-2 NMSA; patronizing prostitutes, 30-9-3 NMSA;
19 promoting prostitution, 30-9-4 NMSA; or accepting earnings of a prostitute, 30-
20 9-4.1 NMSA; or
- 21 (2) Sexual exploitation of children by prostitution, 30-6A-4 NMSA; or
- 22 (3) Sexual exploitation of children, 30-6A-3 NMSA; or
- 23 (4) Trafficking in controlled substances, 30-31-20 NMSA; distributing
24 controlled substances to a minor, 30-31-21 NMSA; distribution of a controlled
25 substance, 30-31-22 NMSA; possession of a controlled substance, 30-31-23
26 NMSA; distributing a counterfeit controlled substance, 30-31-22B NMSA;
27 distributing, manufacture, or possession of an imitation controlled substance,
28 30-31A-4 NMSA; sale of an imitation controlled substance to a minor, 30-31A-5
29 NMSA; or
- 30 (5) Unlawful possession, delivery, manufacture or delivery to a minor of
31 drug paraphernalia, 30-31-25.1 NMSA; or
- 32 (6) Receiving stolen property, 30-16-11 NMSA; or

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

- 1 (7) Commercial gambling, 30-19-3 NMSA; permitting premises to be used
- 2 for gambling, 30-19-4 NMSA; dealing in gambling devices, 30-19-5 NMSA; or
- 3 (8) Disorderly conduct, 30-20-1 NMSA and § 12-2-5 ROA 1994; or
- 4 (9) Unlawful carrying of a deadly weapon, 30-7-2 NMSA and § 12-2-8 ROA
- 5 1994; unlawful possession of a handgun, 30-7-2.2 NMSA; negligent use of a
- 6 weapon, 30-7-4 NMSA and § 12-2-9 ROA 1994; unlawful possession of a
- 7 switchblade, 30-7-8 NMSA and § 12-2-10(A) ROA 1994; receipt, transportation
- 8 or possession by a felon of a firearm or destructive device, 30-7-16 NMSA;
- 9 unlawful possession, transfer or sale of weapons, § 12-2-10 ROA 1994; or
- 10 (10) Dangerous use of explosives, 30-7-5 NMSA; negligent use of
- 11 explosives, 30-7-6 NMSA; unlawful sale, possession or transportation of
- 12 explosives, 30-7-7 NMSA; possession of explosives, 30-7-19 NMSA;
- 13 possession of explosive device or incendiary device, 30-7-19.1 NMSA; or
- 14 (11) Any criminal activity by a criminal street gang as defined herein; or
- 15 (12) Shooting at a dwelling or occupied building or shooting at or from a
- 16 motor vehicle, 30-3-8 NMSA; or
- 17 (13) Selling, serving, giving away, disposing of, exchanging, delivering,
- 18 procuring, possessing or permitting the sale of alcoholic beverages to, for or
- 19 by any person under lawful age or to an intoxicated person, 60-7A-16 and 60-
- 20 7B-1 NMSA; using property to provide, offer or permit the consumption of
- 21 intoxicating liquors by three or more persons who are under the age of twenty-
- 22 one without their parent's or guardian's knowledge or consent or the order of
- 23 a practicing physician, or as part of a religious ceremony, or failing to use
- 24 reasonable control and ordinary care to keep persons under the age of twenty-
- 25 one from consuming intoxicating liquors on one's property, § 11-11-5 ROA
- 26 1994; or
- 27 (14) The sale of alcoholic beverages at any place other than a valid (not
- 28 suspended or revoked) licensed premises, 60-7A-4.1 NMSA; or the unlawful
- 29 manufacture of alcoholic beverages, 60-7A-7 NMSA; or
- 30 (15) The unlawful transportation or storage of any property that is the
- 31 subject of a felony theft, misdemeanor theft, or theft by receiving under
- 32 Chapter 30, Article 16 NMSA; or

- 1 (16) The storage or concealment of weapons or tools used in the
- 2 commission of a violent crime or tampering with evidence, 30-22-5 NMSA;
- 3 harboring or aiding a felon, 30-22-4 NMSA; or
- 4 (17) Fleeing or evading a police officer on foot or by vehicle, 30-22-1
- 5 NMSA; or escape from a peace officer, 30-22-10 NMSA; or
- 6 (18) Dog fighting, 30-18-9 NMSA; or
- 7 (19) Assault upon a peace officer, 30-22-21 NMSA; aggravated assault
- 8 upon a peace officer, 30-22-22 NMSA; assault with intent to commit a violent
- 9 felony upon a peace officer, 30-22-23 NMSA; battery upon a peace officer, 30-
- 10 22-24 NMSA; aggravated battery upon a peace officer, 30-22-25 NMSA;
- 11 assisting in assault upon a peace officer, 30-22-26 NMSA; disarming a peace
- 12 officer, 30-22-27 NMSA; or
- 13 (20) Incidents of unreasonable noises, § 12-2-4 ROA 1994 and §§ 9-9-1 et
- 14 seq. ROA 1994; or
- 15 (21) Murder, 30-2-1 NMSA; or
- 16 (22) Manslaughter, 30-2-3 NMSA; or
- 17 (23) Incidents of assault, 30-3-1 NMSA; or
- 18 (24) Aggravated assault, 30-3-2 NMSA; or
- 19 (25) Assault with intent to commit a violent felony, 30-3-3 NMSA; or
- 20 (26) Battery, 30-3-4 NMSA; or
- 21 (27) Aggravated battery, 30-3-5 NMSA; or
- 22 (28) Shooting at a dwelling or occupied building; shooting at or from a
- 23 motor vehicle, 30-3-8 NMSA; or
- 24 (29) Assault against a household member, 30-3-12 NMSA; or
- 25 (30) Aggravated assault against a household member, 30-3-13 NMSA; or
- 26 (31) Assault against a household member with intent to commit a violent
- 27 felony, 30-3-14 NMSA; or
- 28 (32) Battery against a household member, 30-3-15 NMSA; or
- 29 (33) Aggravated battery against a household member, 30-3-16 NMSA; or
- 30 (34) Harassment, 30-3A-2 NMSA; or
- 31 (35) Stalking, 30-3A-3 NMSA; or
- 32 (36) Aggravated stalking, 30-3A-3.1 NMSA; or
- 33 (37) Kidnapping, 30-4-1 NMSA; or

- 1 (38) Criminal use of ransom, 30-4-2 NMSA; or
- 2 (39) False imprisonment, 30-4-3 NMSA; or
- 3 (40) Custodial interference, 30-4-4 NMSA; or
- 4 (41) Abandonment or abuse of a child, 30-6-1 NMSA; or
- 5 (42) Contributing to the delinquency of a minor, 30-6-3 NMSA; or
- 6 (43) Obstruction of reporting or investigation of child abuse or neglect,
- 7 30-6-4 NMSA; or
- 8 (44) Unlawful carrying of a firearm in a licensed liquor establishment, 30-
- 9 7-19.1 NMSA; or
- 10 (45) Possession of explosives, 30-7-19 NMSA; or
- 11 (46) Possession of explosive device or incendiary device, 30-7-19.1
- 12 NMSA; or
- 13 (47) Facsimile or hoax bomb or explosive, 30-7-20 NMSA; or
- 14 (48) False report, 30-7-21 NMSA; or
- 15 (49) Interference with bomb or fire control, 30-7-22 NMSA; or
- 16 (50) Incidents of littering, 30-8-4 NMSA; or
- 17 (51) Enticement of a child, 30-9-1 NMSA; or
- 18 (52) Accepting earnings of a prostitute, 30-9-4.1 NMSA; or
- 19 (53) House of prostitution; public nuisance, 30-9-8 NMSA; or
- 20 (54) Criminal sexual penetration, 30-9-11 NMSA; or
- 21 (55) Criminal sexual contact, 30-9-12 NMSA; or
- 22 (56) Criminal sexual contact of a minor, 30-9-13 NMSA; or
- 23 (57) Aggravated indecent exposure, 30-9-14.3 NMSA; or
- 24 (58) Criminal trespass, 30-14-1 NMSA; or
- 25 (59) Breaking and entering, 30-14-8 NMSA; or
- 26 (60) Criminal damage to property, 30-15-1 NMSA; or
- 27 (61) Unauthorized graffiti on personal or real property, 30-15-1.1 NMSA; or
- 28 (62) Larceny, 30-16-1 NMSA; or
- 29 (63) Robbery, 30-16-2 NMSA; or
- 30 (64) Burglary, 30-16-3 NMSA; or
- 31 (65) Aggravated burglary, 30-16-4 NMSA; or
- 32 (66) Possession of burglary tools, 30-16-5 NMSA; or
- 33 (67) Receiving stolen property, 30-16-11 NMSA; or

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

- 1 (68) Shoplifting, 30-16-19 NMSA; or
- 2 (69) Cruelty to animals, 30-18-1 NMSA; or
- 3 (70) Unlawful assembly, 30-20-3 NMSA; or
- 4 (71) Attempt to commit a felony, 30-28-1 NMSA; or
- 5 (72) Conspiracy, 30-28-2 NMSA; or
- 6 (73) Solicitation, 30-28-3 NMSA; or
- 7 (74) Public nuisance, 30-8-1 NMSA; or
- 8 (75) Violations of the New Mexico Liquor Control Act, §§ 60-3A-1, et seq.
- 9 NMSA, and §§ 60-7A-1, et seq. NMSA; or
- 10 (76) Violations of the City of Albuquerque Uniform Housing Code, § 14-3-
- 11 1-1 to § 14-3-5-99 ROA 1994; or
- 12 (77) Violations of the City of Albuquerque Fire Codes, § 14-2-1 ROA 1994;
- 13 or
- 14 (78) Violations of the City of Albuquerque's Abandoned or Inoperable
- 15 Vehicle Ordinance, § 8-5-2-0 to § 8-5-2-99 ROA 1994; or
- 16 (79) Violations of the City of Albuquerque's Humane and Ethical Animal
- 17 Rules and Treatment (HEART) Ordinance, § 9-2-2-2 ROA 1994, *Housing and*
- 18 *Restraint Standards for Mammals and Birds Kept on Residential Property*; or
- 19 (80) Violations of the City of Albuquerque's Humane and Ethical Animal
- 20 Rules and Treatment (HEART) Ordinance, § 9-2-4-7 ROA 1994, *Animal Noise*;
- 21 or
- 22 (81) Violations of the City of Albuquerque's Humane and Ethical Animal
- 23 Rules and Treatment (HEART) Ordinance, § 9-2-4-8 ROA 1994, *Animal Fights*;
- 24 or
- 25 (82) Violations of the City of Albuquerque's Joint Air Quality Control
- 26 Board Ordinance, § 9-5-1-1 to § 9-5-6-3 ROA 1994; or
- 27 (83) Violations of the City of Albuquerque's Food Sanitation Ordinance,
- 28 § 9-6-1-1 to § 9-6-1-99 ROA 1994; or
- 29 (84) Violations of the City of Albuquerque's Albuquerque Insect and
- 30 Rodent Control Ordinance, § 9-7-1 to § 9-7-99 ROA 1994; or
- 31 (85) Violations of the City of Albuquerque's Weed and Litter Ordinance, § 9-
- 32 8-1 to § 9-8-99 ROA 1994; or

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (86) Violations of the City of Albuquerque’s Noise Control Ordinance, § 9-
2 9-1 to § 9-9-12 ROA 1994; or

3 (87) Violations of the City of Albuquerque’s Pollen Control Ordinance, § 9-
4 12-1 to § 9-12-99 ROA 1994; or

5 (88) Violations of the City of Albuquerque’s Pigeon Nuisance Abatement
6 Ordinance, § 9-18-1 to § 9-18-7 ROA 1994; or

7 (89) Violations of the City of Albuquerque’s Integrated Development
8 Ordinance, § 14-16-4-2 ROA 1994; or

9 (90) Driving under the influence of intoxicating liquor or drugs, § 66-8-102
10 NMSA; or

11 (91) Unlawful removal and diminution of services, § 47-8-36 NMSA.

12 (B) A public nuisance shall include and is further defined as any parcel of
13 real property, commercial or residential, that is the subject of or that has been
14 involved with calls for service to any law enforcement agency(ies) for
15 violations of the criminal statutes cited in § 11-1-1-3(A) defining public
16 nuisance and shall include a repeated pattern of calls for service and
17 complaints of vagrants, suspicious persons, suspicious cars, general calls for
18 welfare checks, disorderly conduct, domestic violence, domestic altercations,
19 domestic disputes, loud parties, loud music, neighborhood complaints, noise
20 ordinance violations, and public drunkenness and shall be subjected to the
21 imposition of penalties for public nuisance as provided by § 11-1-1-11 ROA
22 1994.

23 (C) A public nuisance shall include and is further defined as any building or
24 structure, commercial or residential, that has unsecured doorways or window
25 openings or holes in the exterior of the building or structure that permit the
26 entry of unauthorized persons and is without a legally responsible party
27 immediately available to take possession of or secure the structure.

28 *REAL PROPERTY.* Land and all improvements, buildings, and structures,
29 and all estates rights and interests, legal and equitable, in the same, including
30 all forms of ownership and title, future interests, condominium rights, time-
31 share rights, easements, water rights, mineral rights, oil and gas rights, space
32 rights, and air rights.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **RECEIVERSHIP.** The special receivership on the terms set out in § 11-1-1-25
2 below.

3 **RELOCATION AGENCY.** Those employees of the Department of Family and
4 Community Services responsible for implementing the provisions of
5 Ordinance 21-2007 (§ 14-3-5-16 ROA 1994).

6 **RELOCATION COSTS.** The expenses reasonably incurred by a resident
7 displaced from a residential building pursuant to action of the City of
8 Albuquerque. Relocation costs shall be \$2,000 per family unless the resident
9 can demonstrate special circumstances that make the relocation cost a
10 greater amount. If special circumstances are demonstrated, relocation costs
11 may include the actual cost of physically moving to a residential building
12 approved by the relocation agency (the "replacement unit"); costs of moving
13 to a location outside of the immediate area; any security/damage deposit
14 required by the replacement unit owner which exceed the amount of the
15 security/damage deposit recovered from the owner of the building the resident
16 is moving from; utility deposits and hook up cost and the rent for the first
17 month; costs of moving back to the residential building originally vacated
18 after housing code compliance; and any other reasonable relocation costs.

19 **RENTAL AGREEMENT.** Any written or oral agreement allowing occupancy
20 of a residential building by a resident.

21 **RESIDENT.** One or more people entitled under a rental agreement to occupy
22 all or a portion of a residential building to the exclusion of others and who
23 actually reside(s) at such location.

24 **RESIDENT REMOVAL.** The removal of resident(s) from their residential
25 building as a result of an action filed by the City of Albuquerque under the
26 authority of § 11-1-1-21 ROA 1994, or a comparable proceeding authorized by
27 ordinance, statute or common law, to abate a nuisance resulting in the
28 closure, receivership, sale or destruction of the residential unit.

29 **RESIDENTIAL BUILDING.** A building or portion thereof designed or used for
30 human habitation.

31 **STRUCTURE.** Anything constructed, erected, or placed upon real property
32 which is so firmly attached to the land as to be reasonably considered part of
33 the real estate, and includes buildings of every type and nature whatsoever.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **TENANT.** Any person who uses, resides in, or occupies property identified
2 as a public nuisance, regardless of whether the tenant has the consent of the
3 owner to use, reside, or occupy the property.

4 **VEHICLE.** Every device in, upon or by which any person or property is or
5 may be transported or drawn upon a highway, including any frame, chassis or
6 body of any vehicle or motor vehicle, except devices moved exclusively by
7 human power or used exclusively upon stationary rails or tracks.

8 **SUBPART B:**

9 **CRIMINAL ABATEMENT OF PUBLIC NUISANCE OFFENSES: IN PERSONAM**
10 **PROCEEDINGS**

11 **§ 11-1-1-10 PUBLIC NUISANCES PROHIBITED.**

12 **(A)** It shall be unlawful for any owner, manager, tenant, lessee, occupant, or
13 other person having any legal or equitable interest or right of possession in
14 any real property, vehicle, or other personal property to intentionally,
15 knowingly, recklessly, or negligently commit, conduct, promote, facilitate,
16 permit, fail to prevent, or otherwise let happen, any public nuisance in, on or
17 using any property in which they hold any legal or equitable interest or right of
18 possession.

19 **(B)** An owner of property whose own activities on the real property are not
20 a nuisance shall not be in violation of this ordinance if the owner has no
21 knowledge of the public nuisance activity and, upon receiving notice of the
22 activity constituting a nuisance, the owner:

23 **(1)** Demonstrates to the City that the rental agreement for the property
24 contains a provision prohibiting criminal activity;

25 **(2)** Delivers to the tenant(s) a written notice of termination of the rental
26 agreement as provided by the New Mexico Owner-Resident Relations Act;

27 **(3)** Files an appropriate report with law enforcement authorities or
28 otherwise cooperates with such authorities in enforcing laws with respect to
29 tenants on the property;

30 **(4)** Initiates necessary and appropriate legal action to remove residents
31 involved in criminal activity where such activity can be proven;

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (5) Takes all reasonable and available steps to terminate the public
2 nuisance activity, including, but not limited to, implementing the City's Crime
3 Prevention Standards on the property; and

4 (6) Enters into a written Nuisance Abatement Agreement with the City of
5 Albuquerque wherein the property owner agrees to take specific steps, which
6 may include providing on-site security or otherwise taking action that will
7 abate, terminate or eliminate the public nuisance activity on the property in
8 exchange for the City of Albuquerque reserving its rights and agreeing not to
9 initiate any legal action for public nuisance against the property owner during
10 the term of the agreement provided that the property owner complies with the
11 terms and conditions of the written Nuisance Abatement Agreement and the
12 public nuisance is eliminated, abated or terminated.

13 (7) Victims of domestic violence shall not be identified or named as a
14 defendant in any civil cause of action to abate a public nuisance involving
15 commercial or residential property.

16 § 11-1-1-11 PENALTIES FOR PUBLIC NUISANCE VIOLATIONS.

17 (A) Any person who violates any provision of this ordinance shall, upon
18 conviction, be subject to a fine not exceeding \$500 or by imprisonment not
19 exceeding 90 days or both. Each separate violation shall constitute a separate
20 offense and every day on which any violation exists shall constitute a separate
21 violation and offense.

22 (B) Upon conviction of violation of this ordinance, the City shall register the
23 violating property with the city agencies and/or the County Clerk.

24 (C) *Conditions of suspended sentences.* In the event that the court chooses
25 to suspend any portion of the fine or sentence for a violation of this ordinance,
26 the City shall request that the court make the suspended sentence expressly
27 conditional on the following terms:

28 (1) The defendant must evict, remove, and permanently bar from entering
29 the property any persons who committed the criminal activity forming the
30 basis of the public nuisance, including the defendant himself, his or her family
31 members and relatives, and owners, tenants, occupants, guests, and other
32 persons. This may be accomplished through forcible entry and detainer

[Bracketed/Underlined Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 actions, sale of the property, new leases of the property, or other legal action
2 as needed; and

3 (2) The defendant must take steps to abate the public nuisance, eliminate
4 its past and continuing adverse effects on the neighborhood, and prevent
5 public nuisances from recurring on the property. Such steps may include
6 landlord training, tenant background checks and screening, making
7 improvements to the property, including general repairs which will bring the
8 property into compliance with the Uniform Housing Code, §§ 14-3-1 et seq.,
9 ROA 1994; Integrated Development Ordinance, §§ 14-16-1-1, et seq., ROA
10 1994, including fencing, lighting, and destruction of buildings, modifications
11 to leases, security guards, removal of trash, junk, and graffiti, and compliance
12 with all other applicable City Codes; and

13 (3) Any other conditions the court deems appropriate.

14 (D) *Posting and publication of public nuisance convictions.* Upon the
15 conviction of any person for violating this ordinance, in addition to any fine
16 and/or jail sentence, the City may file in the office of the County Clerk a
17 certificate describing the real property and that it has been found to be a
18 public nuisance. The City may also post such notices in prominent places on
19 the real property on which the public nuisance occurred. These notices may
20 be attached to any structure on the real property. The City shall have the right
21 to enter the real property for the purpose of erecting, affixing, maintaining and
22 removing these notices. The City may also publish or release notices
23 describing the property and stating that it has been found to be a public
24 nuisance in or to newspapers, periodicals, magazines, fliers and other print
25 media, and may release such notices to television, radio and cable media. The
26 City may post the property and release or publish the notices provided above
27 for a period not exceeding one year from the conviction, or, in the event that
28 the conviction is appealed, one year from the date the conviction is affirmed. It
29 shall be unlawful for any person to interfere with, remove, obliterate, obscure,
30 cover, or destroy any notice posted pursuant to the provisions of this section.

31 (E) *Additional and alternative remedies.* In addition or in the alternative to
32 the criminal fines, sentences, conditions of suspended sentences, publication,
33 posting, press and media releases, and other sanctions provided above, the

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 City may also seek administrative remedies against any applicable license and
2 the civil remedies provided in this ordinance. These remedies shall be
3 cumulative, and the City may pursue one or more of them, simultaneously or
4 in succession.

5 § 11-1-1-12 Administration.

6 The Mayor's designee shall be responsible for the administration of this
7 article. Reasonable rules and regulations may be promulgated by the Mayor's
8 designee to carry out the intent and purpose of this article.

9 **SUBPART C:**

10 **CIVIL ABATEMENT OF PUBLIC NUISANCE OFFENSES: IN REM**
11 **PROCEEDINGS**

12 § 11-1-1-20 INTENT.

13 (A) The abatement of public nuisances for the protection of public health,
14 safety, and welfare is a matter of local concern. The purpose of this subpart is
15 not to punish, but to abate public nuisances. The actions provided in this
16 subpart are designed to abate public nuisances by removing the property from
17 criminal use and as a base of criminal operations, to make property owners
18 vigilant in preventing public nuisances on, in, or using their property and
19 responsible for the lawful use of their property by tenants, guests and
20 occupants, and to deter public nuisances. The remedies provided in this
21 subpart are directed at the property involved without regard to ownership, title
22 or right of possession and the culpability or innocence of those who hold
23 these rights. The remedial actions provided in this subpart are intended to be
24 civil in nature. The remedies of temporary restraining order, closure,
25 receivership, sale, and/or destruction are intended to be in rem, against the
26 property itself, and not against any individual directly. However, the remedies
27 of temporary restraining order, civil judgment, and permanent injunction may
28 be partially in personam.

29 (B) In order to ensure that the remedies provided in this ordinance are
30 applied in good faith and for the purposes of public nuisance abatement, no
31 City employee's or law enforcement officer's employment or level of salary
32 shall depend upon the frequency or quantity of actions and remedies under
33 this ordinance that he or she produces.

1 (C) This subpart is not intended to authorize any act expressly prohibited
2 by state law, nor to forbid any conduct expressly authorized by state law. The
3 provisions of this subpart shall be construed to avoid any such direct and
4 express conflict.

5 (D) The sections of this subpart are intended to provide a comprehensive
6 scheme for civil public nuisance abatement and should be read together.

7 **§ 11-1-1-21 PROCEDURE IN GENERAL.**

8 (A) The remedies provided in Subpart C of this ordinance are cumulative
9 and supplementary to the criminal penalties provided in Subpart B of this
10 ordinance, the criminal remedies provided by any other criminal ordinance or
11 statute, other civil remedies, and any administrative proceedings to revoke,
12 suspend, fine, or take other action against any license. The City may pursue
13 the remedies provided in Subpart C of this ordinance, the criminal penalties
14 provided in Subpart B of this ordinance or other ordinances or statutes, other
15 civil actions or remedies, administrative proceedings against a license, or any
16 one or more of them, and may do so simultaneously or in succession.

17 (B) In the event that the City pursues both the criminal penalties in Subpart
18 B, the criminal remedies provided in any other section, other civil remedies, or
19 the remedies of any administrative action and the remedies in Subpart C, the
20 civil actions provided in Subpart C shall not be delayed or held in abeyance
21 pending the outcome of any proceedings in the criminal, civil or administrative
22 action, or any action filed by any other person, unless all parties to the action
23 under Subpart C so stipulate.

24 (C) All actions under Subpart C are civil and remedial in nature. All closure,
25 receivership, sale and destruction remedies under Subpart C shall be in
26 rem. Injunctive remedies under this section may be partly in personam.

27 (D) Actions under Subpart C of this ordinance shall be filed by the City
28 Attorney for the City of Albuquerque and/or by the District Attorney for the
29 County of Bernalillo. A private citizen, in the name of the state, may also bring
30 an action under Subpart C.

31 (E) Actions under Subpart C of this ordinance shall be in accordance with
32 the New Mexico Rules of Civil Procedure and the New Mexico Rules of
33 Evidence.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (F) Actions under Subpart C of this ordinance may affect the use,
2 possession, enjoyment, and title to real property. Accordingly, the City may
3 file and record a notice of lis pendens against the real property involved.

4 (G) An action under Subpart C of this ordinance shall be commenced by the
5 filing of a verified complaint or a complaint verified by an affidavit and a
6 motion for temporary restraining order in accordance with the New Mexico
7 Rules of Civil Procedure.

8 (H) The defendants to an action under Subpart C of this ordinance and the
9 persons liable for the remedies in this section may include the property itself,
10 any persons owning or claiming any legal or equitable interest or right of
11 possession in the property, all tenants and occupants at the property,
12 managers and agents for any persons owning or claiming a legal or equitable
13 interest in the property, any persons committing, conducting, promoting,
14 facilitating or aiding the commission of or flight from a public nuisance, and
15 any other persons whose involvement may be necessary to abate the
16 nuisance, prevent it from recurring, or to carry into effect the court's orders for
17 temporary restraining orders, closures, receiverships, permanent injunctions,
18 liens, sales and destruction. Any person holding any legal or equitable interest
19 or right of possession in the property who has not been named as a defendant
20 may intervene as a defendant.

21 (I) Notification before filing civil action or imposing civil fine.

22 (1) At least ten (10) calendar days before filing a civil action under this
23 ordinance involving any closure, or receivership of real property or imposing a
24 civil fine, the Mayor's designee shall post a notice at the main entrances to the
25 buildings or at some other prominent place on the real property. The Mayor's
26 designee shall also mail a notice by certified mail, return receipt requested, to
27 the owner(s) of the real property and to the holder(s) of the last deed of trust
28 recorded on the real property. The mailing of the notice shall be deemed
29 sufficient if mailed to the owner(s) and the holder(s) of the last recorded deed
30 of trust at the address(es) shown on the records of the Bernalillo County Clerk
31 and/or the Bernalillo County Assessor's Office. The posted and mailed notices
32 shall state that the real property has been identified as a public nuisance and
33 that a civil action under this ordinance may be filed and a civil fine may be

1 imposed. All notices shall include instructions in the top five non-English
2 languages spoken in Albuquerque on how to obtain additional information
3 and/or language services.

4 (2) The Mayor's designee is authorized to enter upon property for the
5 purpose of posting notice and to affix the notice in any reasonable manner to
6 any buildings and structures.

7 (3) The Mayor's designee shall not be required to post or mail any notice
8 specified in Subsection (I)(1) whenever he or she determines, in his or her sole
9 discretion, that any of the following conditions exist:

10 (a) The public nuisance poses a threat to public safety; or

11 (b) Notice could jeopardize a pending investigation of criminal or public
12 nuisance activity, confidential informants, or other police activity; or

13 (c) Notice could result in sale, transfer, encumbrancing or destruction of
14 the property; or

15 (d) Other emergency circumstances exist; or

16 (e) The owner(s) and the holder(s) of the last recorded deed of trust
17 have been notified in writing within the last 120 days that the property has
18 been identified as a public nuisance and that a civil action under this
19 ordinance may be filed.

20 (4) It shall be unlawful for any person other than the Mayor's designee to
21 remove any notice posted under the provisions of this subsection.

22 (J) Whenever a civil action is filed pursuant to § 11-1-1-21(I) ROA 1994 that
23 involves a building occupied by a resident the following shall apply.

24 (1) The owner of a residential building (the "owner") shall pay relocation
25 costs for the residents who reside at such residential building when the ten-
26 day notice required in § 11-1-1-21(I) ROA 1994 is issued, subject to the
27 provisions of division (J)(6) of this section. This requirement shall be
28 applicable when any condition which is the basis for the order to vacate is
29 within the control of the owner and the owner or his agent knew or should
30 have known of the existence of the conditions that violate applicable codes,
31 statutes, ordinances or regulations prior to the order to vacate. Notice of such
32 conditions by a governmental agency responsible for the enforcement of a
33 building, residential unit, housing or other appropriate code served on the

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 owner or the owner's agent shall be proof that the owner knew of the
2 conditions. Payment of relocation costs shall be made by the owner to the
3 agency designated by the Mayor's designee to administer relocation (the
4 "relocation agency") within 30 days after the owner's receipt of the relocation
5 cost assessment issued by the relocation agency. Interest shall accrue on any
6 amount unpaid by the owner commencing 30 days after the date the relocation
7 agency first advances relocation assistance funds to the displaced
8 resident. Interest accrual shall not be stayed during an appeal by the owner,
9 but an owner who is successful on appeal shall not be liable for
10 interest. Owners who, on appeal, are found to not owe relocation costs shall
11 have payments they have made to the relocation agency refunded to them
12 without interest except for any interest actually paid by the owner.

13 (2) In addition to the notice requirements of § 11-1-1-21(I) ROA 1994, at the
14 time the notice that the City has filed a civil action under Ordinance 21-2007,
15 notification shall be given to the owner that the owner may be required to pay
16 the relocation costs of any displaced residents. The owner shall also be
17 served with a copy of Ordinance 21-2007.

18 (3) At the time that a notice is served on the owner of the property, a
19 notice in substantially the following form shall be served on those residents
20 known by name to the Mayor's designee. Such notice shall be served by
21 personal service or by mailing a copy of such notice by certified mail, postage
22 prepaid, return receipt requested. As to residents unknown by name to the
23 Mayor's designee, service may be accomplished by posting such notice at the
24 main entrances or at some other prominent place on or within the residential
25 building. The notice shall be written in both English and Spanish. The notice
26 shall be provided to the relocation agency on or before the day the notice to
27 the residents is served or posted.

28 **NOTICE TO RESIDENTS**
29 **YOU MAY BE REQUIRED TO MOVE**
30 **IF YOU MUST MOVE, YOU MAY BE ENTITLED TO MONEY**

31 The City believes there may be health and/or safety problems with the
32 building where you live. The City has filed a lawsuit asking that the building
33 where you live be closed.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 The Court may order the building to be closed.

2 If the Court orders that you must move, City law may allow you to be paid, by
3 your landlord, for the cost of moving and for some of your rent at a new
4 location.

5 Please contact the City Relocation Agency at the following phone number
6 and address, as soon as possible, for more information on your rights. If you
7 wait more than 60 days you may lose your right to any money.

8 Phone Number:

9 Address:

10 (4) In addition to payment of actual relocation costs a minimum fixed fee
11 for temporary relocation may be established by regulation. Rental payments
12 shall not be made beyond temporary relocation periods.

13 (5) The relocation agency shall determine eligibility for and amount of
14 relocation benefits. Residents shall not be eligible for relocation costs if they
15 do not make a claim with the relocation agency for relocation costs within 60
16 calendar days after being served with a notice that they are to relocate. In
17 determining eligibility, the relocation agency shall consider whether:

18 (a) The residents had a rental agreement at the time the notice was
19 served on the residents;

20 (b) A court had issued an eviction order to the residents prior to the
21 date the notice was served on the residents;

22 (c) The residents caused or substantially contributed to the conditions
23 that were the basis of the notice to vacate;

24 (d) The conditions that were the basis for the notice to vacate were
25 caused by fire, flood or other natural disasters;

26 (e) The failure to meet the requirements of this code was due to the
27 willful or negligent acts or omissions of the owner;

28 (f) The resident was in default for non-payment of rent;

29 (g) The basis of the notice to vacate is for a condition caused by the
30 resident's or any third party's illegal conduct without the owner's prior
31 knowledge; or

32 (h) For an owner occupant of a mobile home who is renting a lot or
33 parcel for use as a site for the location of the mobile home, whether the

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 requirement to vacate was caused by actions outside the control of the
2 resident.

3 (6) After notice to the owner and a hearing at which the owner shall have
4 an opportunity to appear and present evidence, the Mayor's designee shall be
5 entitled to place a lien on the property on which the residential building that is
6 the subject of a notice to vacate is located, and to recover costs paid by the
7 relocation agency that are owed but have not been reimbursed by the owner
8 provided the Mayor's designee proves:

9 (a) The residents were parties to a rental agreement at the time the
10 notice was served on the residents whose term had not expired;

11 (b) The residents had not been served with a valid notice of default
12 under the rental agreement which would have entitled the owner to evict the
13 resident;

14 (c) The residents did not cause or substantially contribute to the
15 conditions that were the basis of the notice to vacate;

16 (d) The conditions that were the basis for the notice to vacate were not
17 caused by fire, flood or other natural disasters;

18 (e) The failure to meet the requirements of this code was due
19 substantially to the willful or grossly negligent acts or omissions of the owner;

20 (f) The resident was not in default for non-payment of rent;

21 (g) The basis of the notice to vacate is for a condition that was not
22 caused by the resident's or any third party's illegal conduct without the
23 owner's prior knowledge; and

24 (h) For an owner occupant of a mobile home who is renting a lot or
25 parcel for use as a site for the location of the mobile home, the requirement to
26 vacate was not caused by actions outside the control of the resident.

27 (7) The Mayor's designee shall, by regulation, establish a procedure for
28 notice and an impartial evidentiary hearing prior to any determination that an
29 owner must repay relocation costs. The owner shall be entitled to appeal the
30 assessment of relocation costs by the relocation agency pursuant to the
31 appeal provisions of this code. Such appeal shall be filed within 30 calendar
32 days of the owner's receipt of the relocation cost assessment from the

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 relocation agency. The filing of an appeal shall not stay the relocation
2 process.

3 (8) The Mayor's designee may promulgate regulations governing the
4 administration of this section, including eligibility for relocation costs, the
5 amount and method of payment of relocation costs, the criteria replacement
6 units must meet.

7 (9) No action taken pursuant to this division shall affect the rights of
8 residents and owners in any civil litigation. Nothing in this division shall be
9 construed to change the obligations and rights of owners and residents as
10 required in the Uniform Owner-Resident Relations Act, Section §§ 47-8-1 et
11 seq. NMSA 1978.

12 (10) The relocation agency shall provide assistance in finding alternative
13 housing for residents who are displaced and qualify for relocation assistance
14 under Ordinance 21-2007.

15 (11) From the time that the City first notifies an owner of conditions that
16 violate applicable codes, statutes, ordinances or regulations to the time that
17 the relocation assistance payments are paid to eligible residents or the time
18 the conditions cited are corrected, the owner shall not evict, harass or
19 intimidate any resident for the purpose of avoiding or diminishing application
20 of this division. Included in this prohibition is the reduction of services to a
21 resident or materially increasing or changing the obligations of any resident,
22 including rent increases, for purposes of attempting to have the resident
23 vacate the residential building.

24 (12) The City shall be entitled to attorneys' fees and costs arising from
25 any legal action to collect relocation costs assessed to owners.

26 § 11-1-1-22 TEMPORARY RESTRAINING ORDERS IN GENERAL.

27 (A) *Intent.* Public nuisances are a real, direct and immediate threat to the
28 health, safety, and welfare of the people of Albuquerque. Public nuisances
29 cause immediate and irreparable injury, damages and losses to the citizens of
30 Albuquerque and their governmental agencies. Actions at law are not always
31 an adequate remedy, and the protection of public health, safety, and welfare
32 may require the temporary restraining orders provided in this section. Ex parte
33 temporary restraining orders are necessary to provide rapid relief from public

1 nuisances without the delay entailed by an adversarial hearing and personal
2 service and to prevent persons from encumbering, selling or transferring
3 property that may be the subject of the remedies in this ordinance. The
4 issuance and execution of temporary restraining orders under Subpart C of
5 this ordinance shall not be deemed a bailment of property. The owner(s) of the
6 property remains responsible for the maintenance and security of property
7 subject to temporary restraining orders and shall be permitted reasonable
8 access to the property for these purposes upon application to the court.

9 (B) *Form of proposed temporary restraining order.* Every temporary
10 restraining order proposed by the City under Subpart C of this ordinance shall
11 set forth the reason for its issuance, be reasonably specific in its terms, and
12 describe in reasonable detail the acts and conditions authorized, required or
13 prohibited, and shall be in accordance with the New Mexico Rules of Civil
14 Procedure.

15 § 11-1-1-23 TEMPORARY RESTRAINING ORDERS; PUBLIC NUISANCES.

16 (A) *Restraining orders to persons concerning real property, vehicles, other*
17 *personal property and public nuisances.* The City may petition the court to
18 issue a temporary restraining order that makes the following orders for
19 restraining persons as to real property, vehicles, other personal property, and
20 public nuisances, which orders shall be served and become effective pursuant
21 to the New Mexico Rules of Civil Procedure:

22 (1) The Mayor's designee or any police officer or sheriff's deputy to post
23 the summons, complaint, and temporary restraining order on the real property
24 and to serve copies upon any person who reasonably appears or claims to
25 hold any legal or equitable interest or right of possession in the property.

26 (2) To restrain all persons from removing, concealing, damaging,
27 destroying, or selling, giving away, encumbering or transferring any interest in
28 vehicles, other personal property, fixtures, structures, or real property, or the
29 contents of the same, or using any of the property as security for a bond.

30 (3) To require persons holding any legal or equitable interest or right of
31 possession in the real property, vehicle, or other personal property to take
32 steps to abate the public nuisance and prevent it from recurring.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (4) The Mayor's designee or any police officer to take reasonable steps to
2 abate the nuisance activity and prevent it from recurring.

3 (5) To require certain named individuals to stay at least 200 yards away
4 from the property at all times.

5 (6) Any other orders that may be reasonably necessary to take the
6 property into the court's constructive custody and to access and safeguard
7 the property.

8 (B) *Closure of real property.* In addition to the orders above, the City may
9 petition the court to include in the temporary restraining order the following
10 orders with respect to the closure of real property and the contents of
11 buildings, which orders shall be served and become effective pursuant to the
12 New Mexico Rules of Civil Procedure:

13 (1) The Mayor's designee or any police officer to enter upon and close the
14 real property, and buildings and structures upon the real property and the
15 contents of the same, using any reasonable force necessary.

16 (2) The city may petition the court to permit persons holding legal or
17 equitable interest or right of possession in the real property to provide for the
18 maintenance, utilities, insurance and security of the property reasonable
19 access to perform these duties or, at the discretion of the City Attorney, to
20 permit the Mayor's designee to perform these duties in lieu of the owners. If
21 the Mayor's designee chooses to perform the duties, the owner(s) shall be
22 responsible for all costs incurred.

23 (3) Where real property involved contains three or more apartments or
24 other individualized rental units, the city may petition the court to order in lieu
25 of closure, but in addition to the other orders provided above, that certain
26 named individuals who committed, conducted, promoted, facilitated or aided
27 the commission of a public nuisance be removed from the property, but that
28 other persons lawfully on the premises be permitted to remain, and the
29 property be placed in a special receivership as provided in this
30 subsection. The City shall request that a receiver appointed ex parte by the
31 court take possession of the property to the exclusion of the owners and other
32 persons holding any legal or equitable interest and their managers and agents
33 then in possession, collect rents from the tenants, and pay the operating

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 expenses, taxes, utilities, and maintenance expenses on the property
2 including the cost of abating public nuisances and preventing the same from
3 recurring. The receiver shall not pay the principal or interest on any note, deed
4 of trust, mortgage, installment land contract or similar instrument, and these
5 obligations shall remain in the real property. The City shall petition the court
6 to periodically award the receiver reasonable fees for his or her services to be
7 paid out of the rents, profits, and income. The receiver should account for all
8 income and expenses in accordance with the laws of New Mexico. The City
9 shall petition the court to order the defendants to pay the fees and expenses
10 of the receiver, utilities, maintenance, security, operating expenses, taxes,
11 insurance and other reasonable expenses related to the property to the extent
12 that the rents, income, and profits of the property are insufficient to defray the
13 same. The receiver appointed ex parte shall not be replaced except upon the
14 stipulation of all parties. The City may petition the court to make other
15 reasonable orders consistent with these provisions for the administration of
16 this special receivership.

17 (4) Any other orders that may be reasonably necessary to access,
18 maintain, and safeguard the property.

19 **§ 11-1-1-24 MOTION TO VACATE OR MODIFY TEMPORARY RESTRAINING**
20 **ORDER.**

21 Any defendant or any person holding any legal or equitable interest or right
22 of possession in any property restrained under this ordinance may file a
23 motion to vacate or modify the temporary restraining order. Proceedings on
24 these motions shall be in accordance with the New Mexico Rules of Civil
25 Procedure and applicable laws.

26 **§ 11-1-1-25 REMEDIES FOR PUBLIC NUISANCES.**

27 Where the existence of a public nuisance is established in a civil action
28 under Subpart C of this ordinance, the City may petition the court to enter
29 permanent prohibitory and mandatory injunctions requiring the defendant to
30 abate the public nuisance and take specific steps to prevent the same and
31 other public nuisances from occurring on the real property, or using the real
32 property. The permanent prohibitory and mandatory injunction requested by
33 the City may allow the court to consider other remedies as necessary and

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 provided by law to abate the public nuisance. The City may also petition the
2 court to order, as to any real property used to commit, conduct, promote,
3 facilitate or aid the commission of any public nuisance, the following
4 remedies:

5 (1) *Closure and fencing of real property and destruction of certain*
6 *structures.* That the real property be closed for a period of not less than one
7 year and not more than three years from the date of the final judgment, plus
8 any extension of that period caused by failure to comply with the conditions
9 for release of the property set out below, and if the City requests, that certain
10 structures upon the real property be destroyed and sufficiently secure fencing
11 be installed to prevent unauthorized entry onto the property. Should the
12 structures have personal property within them, the property owner shall
13 remove such personal property. Any personal property not removed from the
14 structures within 48 hours notice of the City's intent to destroy the structures
15 shall be deemed rubbish and subject to removal at the owner's expense. The
16 City may request the court to order the defendants to carry out the destruction
17 of the structures or the installation of secure fencing to prevent unauthorized
18 entry onto the property.

19 (A) The City may petition the court to order the defendants to provide for the
20 maintenance, utilities, insurance, and security of the property during the
21 period of closure, and that, at the end of the closure period, the real property
22 be released to the owner only upon (a) payment of all expenses incurred by
23 the City for closure, utilities, security, access, destruction of buildings,
24 maintenance, insurance, and other reasonable expenses; and (b) payment of
25 all civil judgments under Subpart C; and (c) execution by all owners and other
26 persons holding any legal or equitable interest or right of possession in the
27 real property of a complete and unconditional release of the City and all of its
28 employees and agents for liability for the closure and damages to the
29 property.

30 (B) In the event that the owners and other persons holding any legal and
31 equitable interest and rights of possession, or any of them, fail, neglect or
32 refuse to pay the fees, expenses, and judgments, or to execute the release
33 provided above, the property shall remain closed. The issuance and execution

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 of the closure order shall not be deemed a bailment of property. The owner of
2 the property remains responsible for the maintenance and security of property
3 subject to the closure order and shall be permitted reasonable access to the
4 property for these purposes upon application to the court.

5 (2) *Receivership of real property.* That the real property be placed into a
6 special receivership upon the City showing a violation of this ordinance will
7 not be promptly remedied unless a receiver is appointed and that such an
8 appointment is in the best interest of public health, safety and welfare. Any
9 receiver appointed under this section shall have their rights, duties and
10 powers specified by the court in accordance with the provisions in this
11 section.

12 No receiver shall be appointed until the receiver furnishes a bond or other
13 surety and provides proof of liability insurance as the court deems sufficient
14 in the circumstances of the case. Upon appointment, the receiver shall
15 promptly remedy all violations of this ordinance on the property and renovate
16 the property, as reasonably necessary, so that it can be maintained in a safe
17 and secure condition that does not cause blight to the surrounding
18 community or threaten public health, safety or welfare. In order to secure
19 payment of any costs incurred and repayment of any loans for repair,
20 operation, maintenance, renovation or management of the property, the
21 receiver shall have a lien on the property that is second in priority to all other
22 municipal liens. No such lien shall be effective unless recorded in the
23 Bernalillo County Clerk's Office.

24 The receiver shall be authorized to collect rent and shall apply the rent
25 collected to payment of any repairs necessary to bring the property into
26 compliance with the sanitary code and pay the property's necessary
27 operation, maintenance, and management expenses, including insurance
28 expenses and reasonable fees of the receiver, and then to payment of any
29 unpaid taxes, assessments, penalties or interest. Any excess of income in the
30 hands of the receiver shall then be applied to payments due any mortgagee or
31 lienor of record.

32 The receiver shall file with the court and with all parties of record, on a
33 bimonthly basis, an accounting of all funds received by and owed to the

1 receiver, and all funds disbursed, and shall comply with such other reporting
2 requirements mandated by court, unless, for cause shown, the court
3 determines that less frequent or less detailed reports are appropriate.
4 Any receiver appointed pursuant to this section may be removed by the court
5 upon a showing the receiver is not diligently carrying out the work necessary
6 to bring the property into compliance with this ordinance or a showing it is in
7 the best interest of public health, safety and welfare to remove the receiver.
8 Nothing in this section shall be deemed to relieve the owner of property of any
9 civil or criminal liability or any duty imposed by reason of acts or omissions of
10 the owner, nor shall appointment of a receiver suspend any obligation the
11 owner or any other person may have for payment of taxes, of any operating or
12 maintenance expense, or of mortgages or liens, or for repair of the premises.

13 (3) *Removal of vehicles.* In the event the City petitions the court to have
14 real property closed or destroyed pursuant to this ordinance, the City may
15 also petition the court to order the defendants to remove all vehicles from the
16 property prior to its closure or destruction. Any vehicles not removed from the
17 real property within 48 hours of the real property's closure or destruction shall
18 be subject to removal at the owner's expense.

19 § 11-1-1-26 JUDGMENT FOR COSTS AND ATTORNEYS' FEES.

20 In any case in which a public nuisance is established, in addition to the
21 remedies provided above, the City may petition the court for a separate civil
22 judgment for the City's costs and attorneys' fees against every person who
23 committed, conducted, promoted, facilitated, or aided the commission of any
24 public nuisance or who held any legal or equitable interest or right of
25 possession in any real property or vehicle on or in which any public nuisance
26 occurred, or any real property, vehicle or other personal property used to
27 commit, conduct, promote, facilitate or aid the commission of any public
28 nuisance. This civil judgment shall be for the purpose of compensating the
29 City for its costs from pursuing the remedies under Subpart C of this
30 ordinance.

31 § 11-1-1-27 SUPPLEMENTARY REMEDIES FOR PUBLIC NUISANCES.

32 In any action in which probable cause for the existence of a public nuisance
33 is established, in the event that the defendants, or any one of them, fails,

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 neglects or refuses to comply with the court's temporary restraining orders,
2 receiverships, closures, destruction orders, and other orders, the City may
3 petition the court to, in addition to or in the alternative to the remedy of
4 contempt, permit the City to enter upon the real property, vehicle or other
5 personal property, and abate the nuisance, take steps to prevent public
6 nuisances from occurring, and/or perform other acts required of the
7 defendants in the court's temporary restraining orders and other orders.

8 **§ 11-1-1-28 LIEN FOR JUDGMENTS.**

9 In addition to the remedies provided in Subpart C of this ordinance, the City
10 shall have a lien against the real property and other personal property on or in
11 which any public nuisance occurred or which was used to commit, conduct,
12 promote, facilitate, or aid in the commission of any public nuisance for the
13 total of all judgments imposed for costs and attorneys' fees. The City may
14 record a statement of this lien with the County Clerk.

15 **§ 11-1-1-29 STIPULATED ALTERNATIVE REMEDIES.**

16 (A) The City and any defendants to an action under Subpart C of this
17 ordinance may voluntarily stipulate to temporary restraining orders, closures,
18 receiverships, forfeitures, destruction, judgments, liens, and other remedies,
19 temporary or permanent, that are different or altered from those provided in
20 Subpart C of this ordinance, including the following:

21 (1) Shorter or less stringent temporary restraining orders, closures and
22 receiverships.

23 (2) Receiverships on other terms, including terms providing for the
24 payment of secured indebtedness on the subject property, removal or
25 substitution of the receiver, and other terms.

26 (3) Nondestruction of buildings, other structures, vehicles and other
27 personal property.

28 (4) Reduction or waiver of civil judgments and liens.

29 (5) Other reasonable stipulations designed to abate the public nuisance,
30 prevent public nuisances from recurring, deter public nuisance activity, and
31 protect the public interest.

32 (B) Any stipulations for alternative remedies shall be made by an order of
33 the court.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 § 11-1-1-30 CIVIL FINE.

2 (A) The Mayor's designee may impose a civil fine of \$200 for a first failure
3 to cure violations of this article, \$300 for a second failure to cure violations of
4 this article and \$500 for a third or subsequent failure to cure violations of this
5 article after notice has been issued pursuant to Section 11-1-1-21. Failure to
6 pay the fine, appeal the fine, or prevail at an administrative hearing
7 challenging the fine shall allow the Mayor's designee to place a lien upon the
8 subject property or any asset owned by the subject property's owner. The
9 Mayor's designee may also choose to collect on the fine through any other
10 method allowed by law.

11 (B) General. Whenever the Mayor's designee imposes a civil fine for
12 violations of this article, the Mayor's designee shall issue of notice of civil fine
13 directed to the owner of the subject property, their agent and/or responsible
14 party, and, where appropriate, to the occupant of the subject property, as
15 shown on the records of the Bernalillo County Assessor and the Mayor's
16 designee. The notice of civil fine shall contain:

17 (1) The street address and a legal description sufficient for identification
18 of the premises upon which the building is located;

19 (2) A statement that the Mayor's designee has found the subject
20 property to be in violation of this article;

21 (3) A concise description of the conditions found to render the subject
22 property dangerous under the provisions of this code;

23 (4) The amount of the fine assessed;

24 (5) A statement that the fine must be paid in full within 30 days of the
25 date of the notice;

26 (6) Instructions for how the fine can be paid; and

27 (7) A statement advising that any person having any title or legal
28 interest in the subject property may appeal from the notice of civil fine to the
29 Office of Administrative Hearings, provided the appeal is made in writing as
30 provided in this article, and filed with the Office of the Administrative Hearings
31 within 15 days of service of notice of civil fine, and that failure to timely appeal
32 the notice of civil fine shall constitute a waiver of the right to appeal.

33 (C) Method of Service.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (1) Service of the notice of civil fine shall be made upon all persons
2 entitled thereto either personally or by mailing a copy of such notice and order
3 by certified mail, postage prepaid, return receipt requested, to each such
4 person and owner, responsible party or identified agent at their address as
5 shown on the records of the Bernalillo County Assessor or as known to the
6 Mayor's designee. If no address of any such person so appears or is known to
7 the Mayor's designee, then a copy of the notice of civil fine shall be so mailed,
8 addressed to such person, at the address of the building involved in the
9 proceedings and posted thereon.

10 (2) The failure of any such person to receive such notice shall not affect
11 the validity of any proceedings taken under this section. Service by certified
12 mail in the manner herein provided shall be effective on the date of mailing.

13 (C) Proof of Service. Proof of service of the notice of civil fine shall be
14 certified by written affidavit executed by the person effecting service,
15 declaring the time, date and manner in which service was made. The
16 declaration, together with any receipt card returned in acknowledgement of
17 receipt by certified mail, shall be affixed to the copy of the notice and order
18 retained by the Mayor's designee.

19 (D) Appeal. The owner may appeal a civil fine issued pursuant to this
20 article. The request for appeal and the hearing shall comply the procedures
21 outlined in the Independent Office of Hearings Ordinance, ROA 1994, Sections
22 2-7-8-1 to -9.

23 **§ 11-1-1-31 EMERGENCY ABATEMENT.**

24 (A) Notwithstanding any other provision in this code if, in the opinion of
25 the Mayor's designee, the conditions at a property constitute an imminent
26 hazard, the Mayor's designee may order immediate abatement of the hazard
27 without notice. Such abatement of an imminent hazard shall be limited to the
28 minimum work necessary to remove the hazard and may include
29 disconnection of utilities, securing of the structures, installation of fencing or
30 emergency cleaning of the property to abate the hazard.

31 (B) The City shall pay the cost and expense of such abatement from any
32 appropriation made for that purpose.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (C) A lien shall be recorded with the Bernalillo County Clerk's Office for all
2 the costs incurred by the City as a result of abating the property.

3 (D) Whenever the Mayor's designee finds that any structure contains an
4 imminent hazard or health hazard, the inspector may declare such structure
5 unfit for occupancy as provided in the Uniform Housing Code ("UHC"), ROA
6 1994, Sections 14-3-1-1 to 14-3-4-11, and order it to be vacated or to remain
7 vacant. A structure declared unfit for occupancy and ordered vacated or to
8 remain vacant under the provisions of this section shall not be leased, rented
9 or occupied, until it has been inspected and deemed fit for occupancy by the
10 UHC. The City shall re-inspect, for the purpose of re-occupancy, within five
11 business days of the receipt of a written request by the owner, their agent or
12 responsible party.

13 § 11-1-1-32 OTHER SEIZURES, CLOSURES, FORFEITURES AND
14 CONFISCATIONS.

15 Nothing in Subpart C of this ordinance shall be construed to limit or forbid
16 the seizure, confiscation, closure, destruction or forfeiture of property now or
17 hereafter required, authorized or permitted by any other provision of
18 law. Nothing in this ordinance shall be construed as requiring that evidence
19 and property seized, confiscated, closed, forfeited or destroyed under other
20 provisions of law be subjected to the remedies and procedures provided in
21 this ordinance.

22 *SUBPART D:*

23 *DRUG LABORATORY SITE REMEDIATION OF CONTAMINATION*

24 § 11-1-1-40 TITLE.

25 This subpart shall be known and may be cited as the "Cleanup of
26 Clandestine Drug Laboratory Sites Ordinance."

27 § 11-1-1-41 FINDINGS AND INTENT.

28 The City Council finds and states its intent as follows. Clandestine drug
29 laboratory sites are increasing in number in Albuquerque and are a serious
30 health threat to the community. Remediation of the residually contaminated
31 portions of clandestine drug laboratory sites is essential to assure the health,
32 safety and welfare of the community. Property owners must share the
33 responsibility for the clandestine drug laboratory sites on their property by

1 bearing the initial costs of remediation of such sites, subject to restitution as
2 provided in this subpart. This subpart is timely and appropriate because
3 current laws and City regulations are insufficient to address the
4 aforementioned problems. The restrictions contained herein are neither over
5 broad nor vague and are narrowly tailored to serve a substantial government
6 interest.

7 § 11-1-1-42 DEFINITIONS.

8 For the purpose of this subpart, the following definitions shall apply unless
9 the context clearly indicates or requires a different meaning.

10 **CLANDESTINE DRUG LABORATORY.** Property on which methamphetamine,
11 ecstasy, LSD or any other controlled substance is being manufactured or on
12 which there is an attempt to manufacture, or where a person is arrested for
13 having on any property any chemicals or equipment used in manufacturing
14 methamphetamine, ecstasy, LSD or any other controlled substance. In the
15 case of a space rental mobile home or recreational vehicle park, clandestine
16 drug laboratory means the mobile home or recreational vehicle in which
17 methamphetamine, ecstasy, LSD or any other controlled substance is being
18 manufactured or where a person is arrested for having in the mobile home or
19 recreational vehicle any chemicals or equipment used in manufacturing
20 methamphetamine, ecstasy, LSD or any other controlled
21 substance. **CLANDESTINE DRUG LABORATORY** shall include any place or
22 area where chemicals or other waste materials used in clandestine drug
23 laboratories have been located.

24 **CONTROLLED SUBSTANCE.** Any drug or substance or counterfeit
25 substance listed in the Controlled Substances Act, Chapter 30, Article 31
26 NMSA 1978 or regulations adopted thereunder.

27 **DRUG LABORATORY SITE REMEDIATION FIRM.** A professional firm that
28 performs remediation of residual contamination from the manufacture of
29 methamphetamine, ecstasy, LSD or any other controlled substance or the
30 storage of chemicals or equipment used in manufacturing methamphetamine,
31 ecstasy, LSD or any other controlled substance.

32 **ECSTASY (3, 4-METHYLENEDIOXY AMPHETAMINE).** This term has the same
33 meaning prescribed in Section 30-31-6 NMSA 1978 and includes any of the

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 precursor chemicals, regulated chemicals, other substances or equipment
2 used in the unlawful manufacture of Ecstasy and any derivatives thereof.

3 **GROSS CONTAMINATION.** The chemicals, equipment and other items that
4 are found in a clandestine drug laboratory and that are removed by a law
5 enforcement officer or law enforcement agency.

6 **INDUSTRIAL OR ENVIRONMENTAL HYGIENIST FIRM.** A professional firm
7 that conducts pre-remediation testing and post-remediation testing for the
8 remediation of residual contamination from the manufacture of
9 methamphetamine, ecstasy, LSD, or any other controlled substance or the
10 storage of chemicals or equipment used in manufacturing methamphetamine,
11 ecstasy, LSD or any other controlled substance.

12 **LAW ENFORCEMENT OFFICER.** Any employee of a police or public safety
13 department administered by the state or any political subdivision of the state
14 where the employee is responsible for the prevention and detection of crime
15 and the enforcement of the penal, traffic or highway laws of this state as
16 defined in Section 30-20A-2D NMSA 1978, and specifically includes
17 Albuquerque Police Department nuisance abatement inspectors.

18 **LSD (LYSERGIC ACID DIETHYLAMIDE).** This term has the same meaning
19 prescribed in Section 30-31-6 NMSA 1978 and includes any of the precursor
20 chemicals, regulated chemicals, other substances or equipment used in the
21 unlawful manufacture of LSD and any derivatives thereof.

22 **METHAMPHETAMINE.** This term has the same meaning prescribed in
23 Section 30-31-7 NMSA 1978 and includes any of the precursor chemicals,
24 regulated chemicals, other substances or equipment used in the unlawful
25 manufacture of methamphetamine and any derivatives thereof.

26 **OWNER.** Any person, firm, corporation or other entity that owns, in whole or
27 in part, the property subject to this subpart.

28 **PROPERTY.** Real or personal property, including the area within a structure
29 and the area that surrounds a structure and that is within the land boundary or
30 property lines of any of the following:

31 (1) Property that can be used for residential purposes or is occupied by
32 people for any length of time for any purpose.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (2) Property that is governed by the Uniform Owner-Resident Relations
2 Act, Sections §§ 47-8-1 et seq. NMSA 1978, or the Mobile Home Park Act,
3 Sections §§ 47-10-2 et seq. NMSA 1978.

4 (3) A mobile home as defined in Section 47-10-2 NMSA 1978.

5 (4) A recreational vehicle as defined in Section 66-1-4.15 NMSA 1978 and
6 for purposes of this subpart, "recreational vehicle" shall also include a
7 recreational travel trailer as defined in Section 66-1-4.15 NMSA 1978.

8 (5) A vehicle, as defined in § 8-5-2-1 ROA 1994.

9 ***RESIDUALLY CONTAMINATED PORTION OF THE PROPERTY.*** The structure
10 or unit where gross contamination was removed and the area of any adjacent
11 structure, unit or land where visible evidence of residual contamination is
12 observed by a law enforcement officer, including any of the following:

13 (1) If gross contamination is removed from a house, mobile home or
14 recreational vehicle and the notice of removal is posted for the entire house,
15 mobile home or recreational vehicle, then the entire house, mobile home or
16 recreational vehicle, not just the room or rooms in which the gross
17 contamination is found shall be deemed the residually contaminated portion
18 of the property.

19 (2) If gross contamination is removed from a detached shed or garage,
20 the other structures or property on the land are not affected and the notice of
21 removal is posted only for the detached shed or garage, then the detached
22 shed or garage shall be deemed the residually contaminated portion of the
23 property.

24 (3) If gross contamination is removed from a hotel, motel room or
25 apartment unit, the adjacent rooms are not affected and the notice of removal
26 is posted only for the contaminated room or apartment unit, then the
27 contaminated room or apartment unit shall be deemed the residually
28 contaminated portion of the property.

29 (4) If gross contamination is removed from a vehicle, then the entire
30 vehicle shall be deemed the residually contaminated portion of the property.

31 § 11-1-1-43 DECLARATION OF PUBLIC NUISANCE.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 Upon identification by a law enforcement officer of a clandestine drug
2 laboratory site, the property shall constitute a public nuisance until such time
3 as the remediation required by this subpart is completed.

4 **§ 11-1-1-44 CLANDESTINE DRUG LABORATORIES.**

5 (A) *Procedures.* If a law enforcement officer discovers a clandestine drug
6 laboratory or arrests a person for having on any property chemicals or
7 equipment used in manufacturing methamphetamine, ecstasy, or any other
8 controlled substance or a derivative of methamphetamine, ecstasy, LSD or
9 any other controlled substance, the law enforcement officer shall:

10 (1) At the time of the discovery or arrest, shall deliver a copy of the notice
11 of removal pursuant to subsection (B) of this section to the owner of the
12 property if the owner is on the site at the time of delivery, the on-site manager
13 if the manager is on the site at the time of delivery or the on-site drop box if
14 available. In the case of a tenant-owned unit in a space rental mobile home or
15 recreational vehicle park, the officer shall deliver a copy of the notice of
16 removal to the occupant of the unit if the occupant is on site at the time of
17 delivery and to the on-site park landlord if the park landlord is on site at the
18 time of delivery.

19 (2) If the owner or the owner of a space rental mobile home or recreational
20 vehicle park or their agent for service is not personally provided a copy of the
21 notice of removal under the procedures of subsection (A)(1) of this section,
22 then within two city business days after the discovery or arrest, the law
23 enforcement officer shall send the notice of removal by certified mail to the
24 owner of the property and the owner's on-site manager or, in the case of a
25 space rental mobile home or recreational vehicle park, to the owner of the
26 mobile home or recreational vehicle, if applicable, and to the park landlord.
27 These persons are deemed to have received the notice of removal five days
28 after the notice is mailed.

29 (3) If the owner or the owner of a space rental mobile home or recreational
30 vehicle park cannot be identified, the notice of removal may be posted on the
31 property pursuant to subsection (A)(6) of this section.

32 (4) The notice of removal shall be sent to the following:

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (a) The address of the owner and the owner of the mobile home or
2 recreational vehicle park as shown on file with the county assessor.

3 (b) The Albuquerque Environmental Health Department.

4 (c) The Albuquerque Fire Department.

5 The law enforcement officer shall complete an affidavit of service for personal
6 delivery of the notice of removal or posting notice on the property.

7 (5) After a law enforcement or other agency removes the gross
8 contamination on the property, a law enforcement officer shall order the
9 removal of all persons from the residually contaminated portion of the
10 property or dwelling unit, if applicable, or, in the case of a space rental mobile
11 home or recreational vehicle park, from the unit located on the property.

12 (6) After the law enforcement officer removes all persons pursuant to
13 subsection (A)(5) of this section, the law enforcement officer shall affix the
14 notice of removal in a conspicuous place on the property or, in the case of a
15 space rental mobile home or recreational vehicle park, on the unit located on
16 the property.

17 (7) The law enforcement officer shall cause a Certificate of Substandard
18 Property to be filed with the Bernalillo County Assessor upon posting the
19 notice of removal. Such certificate shall include a legal description of the
20 property and have attached to it the notice of removal.

21 (B) *Notice*. The notice of removal shall be in writing and shall contain all of
22 the following:

23 (1) The following shall be printed in large bold type at the top and bottom
24 of the notice: "Substandard Building. Do Not Enter. Unsafe to Occupy."

25 (2) A statement that it is unlawful for any person other than the owner,
26 landlord, manager, law enforcement, an industrial or environmental hygienist
27 firm and/or a drug laboratory site remediation firm to enter the residually
28 contaminated portion of the property until the owner remediates the residually
29 contaminated portion of the property, or in the case of a space rental mobile
30 home or recreational vehicle park, the unit located on the property.

31 (3) A statement that a clandestine drug laboratory was seized or a person
32 was arrested on the property for having chemicals or equipment used in the

1 manufacturing of methamphetamine, ecstasy, LSD or any other controlled
2 substance on the property.

3 (4) The date of the seizure or arrest.

4 (5) The address or location of the property, including the identification of
5 any dwelling unit, room number, apartment number or vehicle identification
6 number.

7 (6) The name of the law enforcement agency or other agency that seized
8 the clandestine drug laboratory or made the arrest and the agency's contact
9 telephone number.

10 (7) A statement that hazardous substances, toxic chemicals or other
11 waste products may still be present on the property or, in the case of a space
12 rental mobile home or recreational vehicle park, in the unit located on the
13 property.

14 (8) A statement that the failure to remediate the residual contamination
15 pursuant to the Cleanup of Clandestine Drug Laboratory Sites Ordinance is
16 punishable by imprisonment up to 90 days and/or a fine up to \$500.

17 (9) A statement that disturbing the notice of removal posted on the
18 property is punishable by imprisonment up to 90 days and/or a fine up to \$500.

19 (10) A statement that the owner of the property shall remediate the
20 residually contaminated portion of the property in compliance with subsection
21 (C) of this section.

22 (11) A statement that if an owner fails to provide any notice required by
23 this section, the owner is subject to penalty and a buyer, tenant or customer
24 may void a purchase contract, rental agreement or other agreement related to
25 the property.

26 (C) *Remediation by owner.* The owner of the property shall remediate the
27 residually contaminated portion of the property by retaining an industrial or
28 environmental hygienist firm to pre-test the property to determine the extent of
29 the contamination and the nature of the required remediation. When the
30 industrial or environmental hygienist firm determines that remediation is
31 required, the owner shall retain a drug laboratory site remediation firm to
32 conduct the remediation. The industrial or environmental hygienist firm and
33 the drug laboratory site remediation firm shall be separate and unaffiliated

1 business entities. The owner shall retain the industrial or environmental
2 hygienist firm and the drug laboratory site remediation firm within 30 days of
3 the day of delivery of personal service of the notice of removal or within 35
4 days of the date the notice of removal is mailed by certified mail or posted on
5 the property. Remediation shall be completed in accordance with the
6 standards for remediation of residual contamination adopted by the
7 Albuquerque Police Department and the City Environmental Health
8 Department within 60 days of the day of delivery of personal service of notice
9 to the owner or within 65 days of the date notice is mailed by certified mail to
10 the owner or for such other period of time that is approved in writing by the
11 Albuquerque Police Department.

12 (D) *Remediation procedures.* An industrial or environmental hygienist firm
13 and the drug laboratory site remediation firm retained to remediate the
14 residually contaminated portion of any property pursuant to this section shall
15 comply with the best practices and standards for remediation of residual
16 contamination adopted by the Albuquerque Police Department and the City
17 Environmental Health Department. The industrial or environmental hygienist
18 firm shall notify the owner whenever the firm determines that any structure
19 requires remediation of contamination as required in this section. The owner
20 shall send such notification of required remediation of contamination to
21 Albuquerque Police Department, the City Environmental Health Department
22 and the City's Chief Building Official. Within one business day after the
23 remediation is complete, the drug laboratory site remediation firm shall notify
24 the Albuquerque Police Department, the City Environmental Health
25 Department and the industrial or environmental hygienist firm that the
26 property is ready for final inspection. After inspection by the industrial or
27 environmental hygienist firm and approval by the Albuquerque Police
28 Department and the City Environmental Health Department, the industrial or
29 environmental hygienist firm shall issue a final clearance document certifying
30 that remediation of the residually contaminated portion of the property was
31 completed pursuant to the standards for remediation of residual
32 contamination and shall deliver the certification document or send the
33 document by certified mail to the owner. The owner shall provide a copy of the

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 certification of completed remediation to each person and entity listed in
2 subsection (A)(4) of this section, the city's Chief Building Official and the law
3 enforcement agency that issued the notice under that subsection. After the
4 final clearance document has been issued, both of the following apply:

5 (1) The owner, landlord, lien holder or manager of the property is not
6 required to comply with subsection (G) of this section.

7 (2) Any person may use, enter, occupy, rent or sell the property.

8 It shall be the responsibility of the owner of the property to file with the County
9 Assessor the document stating that the residually contaminated portion of the
10 property has been remediated. The owner shall also be responsible for the
11 costs associated with filing. The issuance of the document certifying that
12 remediation of the residually contaminated portion of the property was
13 completed pursuant to the standards for remediation of residual
14 contamination shall be a prerequisite for a certificate of occupancy or any city
15 required building inspection and shall not be in lieu of a certificate of
16 occupancy or any city required building inspection.

17 (E) *Contaminated vehicles.* If gross contamination is removed from a
18 vehicle, the notice of removal required in subsection (B) of this section shall
19 be sent by certified mail to the owner of record and lien holder of record, if any
20 exists. Impounded vehicles containing residual contamination shall not be
21 released to the owner or lien holder until the remediation has been completed
22 and paid for by the owner or lien holder. Remediation shall be accomplished
23 by following the same procedures as set forth in subsection (D) of this
24 section. Remediation costs as defined in subsection (J) of this section shall
25 be in addition to any other towing, storage, or other impoundment fees.

26 (F) *Notice to buyers and occupants.* The following notice requirements
27 apply until the remediation is complete as provided in subsection (D) of this
28 section:

29 (1) Within five days after a buyer signs a contract to purchase property,
30 the owner shall notify the buyer in writing that methamphetamine, ecstasy, or
31 any other controlled substance was manufactured on such property or that an
32 arrest, as described in subsection (A) of this section, was made. The buyer
33 shall acknowledge receipt of the notice. A buyer may cancel the purchase

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 contract within five days after receiving the notice without liability. If the
2 owner does not comply with this paragraph, the buyer may void the purchase
3 contract.

4 (2) Landlords and their agents shall provide written notice to all
5 prospective tenants for dwelling units that the dwelling unit was the subject of
6 a notice of removal, as described in subsections (A) and (B) of this section,
7 that methamphetamine, ecstasy, or any other controlled substance was
8 manufactured on the property or that an arrest, as described in subsection (A)
9 of this section, was made. The tenant shall acknowledge receipt of the notice
10 before taking possession of the property or before signing a rental agreement
11 for the property. The notice shall be attached to the rental agreement. If the
12 landlord or their agent does not comply with this paragraph, the tenant may
13 void the rental agreement. For purposes of this paragraph, "dwelling unit"
14 shall include but not be limited to mobile homes and recreational vehicles.

15 (3) Before a customer occupies a room that was the subject of the notice
16 of removal, as described in subsection (A) of this section, the owner or
17 manager shall notify the customer in writing the room was the subject of a
18 notice of removal as described in subsection (A) and (B) of this section, that
19 methamphetamine, ecstasy, LSD or any other controlled substance was
20 manufactured in the room or that an arrest, as described in subsection (A) of
21 this section, was made. The customer shall acknowledge receipt of the notice
22 before taking possession of the room and before signing a room rental
23 agreement. If the owner or manager does not comply with this paragraph, the
24 customer may void the agreement.

25 (4) Owners are required to notify all agents selling, leasing or renting
26 property that is the subject of a notice of removal that such property is the
27 subject of a notice of removal. When a sales, leasing or rental agent is notified
28 that the property is the subject of a notice of removal, such agent shall notify
29 in writing all prospective buyers, tenants or other occupants about the notice
30 of removal and manufacture of methamphetamine, ecstasy, LSD or any other
31 controlled substance on the property or that an arrest, as described in
32 subsection (A) of this section, was made on the property. Notice shall be made
33 in the same manner as required of the owner in this subsection (G).

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (5) When a law enforcement officer has ordered the removal of all persons
2 from property pursuant to § 11-1-1-44(A)(5), owners, landlords and their
3 agents shall continue to be subject to the requirement to not permit people
4 from occupying such property. Compliance with this subsection shall not
5 eliminate the requirement that the property not be occupied.

6 (G) *Mobile home or recreational vehicle space rental parks.* If a mobile
7 home or recreational vehicle in a space rental park contains a clandestine
8 drug laboratory, the landlord of the park, on receipt of a notice pursuant to
9 subsection (A) of this section, shall notify the owner and lienholder of record
10 of the unit to remove the unit from the park within 30 days. This provision
11 shall not apply when the owner of the contaminated mobile home or
12 recreational vehicle is also the owner of the mobile home or recreational
13 vehicle space rental park in which such contaminated mobile home or
14 recreational vehicle is located. If the unit is not removed within 30 days, the
15 landlord of the park shall remediate the contamination following the
16 requirements set forth in subsections (C) and (D) of this section.

17 (H) *Restitution to owner.* A person who operates a clandestine drug
18 laboratory and who is not the owner of the property shall pay restitution to the
19 owner of the property for all costs that the owner incurred to remediate the
20 property and, in the instance of a mobile home or recreational vehicle, the cost
21 incurred by the owner of a space rental park for moving and/or remediating
22 such property.

23 (I) *Remediation by city.* If an owner of property, a vehicle owner, a vehicle
24 lien holder or an owner of a mobile home or recreational vehicle space park,
25 as described under subsection (H) of this section, fails to comply with the
26 remediation of the residually contaminated property or portion of the property
27 as required in this section, the City may remediate the residually contaminated
28 portion of the property or seek a court order requiring the owner to remediate
29 in the manner required in this section. If the City is unable to locate the owner
30 within ten days after the issuance of the Certificate of Substandard Property,
31 the City may proceed with remediation. If the City remediates the
32 contamination, the owner shall pay to the City all costs related to such
33 remediation. If the owner fails to pay the City for its costs of remediation, the

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 City shall be entitled to file a lien against such property for the costs related to
2 the remediation and bring legal action against the owner for such remediation
3 costs. Remediation costs shall include the expense for posting, physical
4 security of the contaminated site, notification of affected people, businesses
5 or any other entities, expenses related to the recovery of cost, laboratory fees,
6 cleanup services, costs for testing for residual contamination, removal costs,
7 and cost incurred for an industrial or environmental hygienist firm and a drug
8 laboratory site remediation firm. When a contaminated vehicle is impounded,
9 the vehicle shall not be released to the owner or a lien holder until remediation
10 is completed and paid by the owner or lien holder and impoundment fees are
11 paid by the owner or lien holder. Remediation costs for vehicles in which
12 gross contamination is found shall include the costs for testing for residual
13 contamination regardless of whether residual contamination is actually
14 required to be remediated. Impoundment fees shall include those fees defined
15 as impoundment charges in § 8-5-2-1 ROA 1994. The City or its contractors
16 may remove property as part of its remediation effort.”

17 SECTION 2. § 9-8-3 of the Albuquerque Weed and Anti-Litter Ordinance is
18 hereby amended as follows:

19 “§ 9-8-3 DEFINITIONS.

20 For the purpose of this article, the following definitions shall apply unless
21 the context clearly indicates or requires a different meaning.

22 *AIRCRAFT.* Any contrivance now known or hereafter invented, used or
23 designated for navigation or for flight in the air. The word "aircraft" shall
24 include helicopters and lighter-than-air dirigibles and balloons.

25 *APPROPRIATE PRIVATE RECEPTACLE.* A litter receptacle with a fireproof
26 interior capable of containing and withstanding fire.

27 *AUTHORIZED PRIVATE RECEPTACLE.* A litter storage and collection
28 receptacle as required and authorized in the solid waste collection regulations
29 set forth in §§ 9-10-1-1 et seq.

30 *COMMERCIAL HANDBILL.* Any printed or written matter, any sample or
31 device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed
32 or otherwise reproduced original or copies of any matter of literature:

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (1) Which advertises for sale any merchandise, product commodity, or
2 thing; or

3 (2) Which directs attention to any business or mercantile or commercial
4 establishments or other activity, for the purpose of either directly or indirectly
5 promoting the interest thereof by sales; or

6 (3) Which directs attention to or advertises any meeting, theatrical
7 performance, exhibition, or event of any kind, for which an admission fee is
8 charged for the purpose of private gain or profit.

9 (4) Which, while containing reading matter other than advertising matter,
10 is predominantly and essentially an advertisement, and is distributed or
11 circulated for advertising purposes, or for the private benefit and gain of any
12 person so engaged as advertiser or distributor.

13 (5) Newspaper as defined herein is and to be construed to be included
14 within the definition of *COMMERCIAL HANDBILL*.

15 *GARBAGE*. Putrescible animal and vegetable wastes resulting from the
16 handling, preparation, cooking and consumption of food.

17 *LITTER*. "Garbage," "refuse" and "rubbish" as defined herein and all other
18 waste material which, if thrown or deposited as herein prohibited tends to
19 create a danger to public health, safety and welfare.

20 *MAYOR'S DESIGNEE*. The Mayor of the City of Albuquerque or anyone
21 designated by the Mayor to take the actions authorized under this ordinance.

22 *NEWSPAPER*. Any newspaper of general circulation as defined by general
23 law, any newspaper duly entered with the Post Office Department of the United
24 States in accordance with Federal statute or regulation, and any newspaper
25 filed and recorded with any recording officer as provided by general law; and
26 in addition thereto shall mean and include any periodical or current magazine
27 regularly published with not less than four issues per year and sold to the
28 public.

29 *NONCOMMERCIAL HANDBILL*. Any printed or written matter, any sample, or
30 device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper,
31 booklet, or any other printed or otherwise reproduced original or copies of any
32 matter of literature not included in the aforesaid definitions of a commercial
33 handbill or newspaper.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **OWNER.** Owner, agent, lessee or occupant or person having charge or
2 control of the property.

3 **PARK.** A park, reservation, playground, beach, recreation center, zoo, golf
4 course, or any other public area in the City, owned or used by the City and
5 devoted to active or passive recreation.

6 **PERSON.** One or more persons, natural persons, corporations, partnerships,
7 associations, joint stock companies, societies and all other entities of any
8 kind capable of being sued.

9 **PRIVATE PREMISES.** Any dwelling, house, building, or other structure
10 designed or used either wholly or in part for private residential purposes,
11 whether inhabited or temporary or continuously uninhabited or vacant and
12 shall include any yard, grounds, walk, driveway, porch, steps, vestibule or
13 mailbox belonging or appurtenant or such dwelling, house, building, or other
14 structure.

15 **PUBLIC PLACE.** Any and all streets, sidewalks, boulevards, alleys or other
16 public ways and any and all public parks, sources, spaces, grounds and
17 buildings.

18 **REFUSE.** All putrescible and nonputrescible solid wastes (except body
19 wastes), including garbage, rubbish, ashes, street cleanings, dead animals,
20 inoperative vehicles and appliances, and solid market and industrial wastes.

21 **RUBBISH.** All waste, including ashes, bottles, cans, carcasses of dead
22 animals, cardboard, cloth, crockery, human or animal excrement, glass,
23 abandoned or unusable household furnishings or appliances, metals, plastics,
24 tree branches and limbs, waste building materials or other items discarded in
25 such a manner as to create a reasonable likelihood of becoming a harborage
26 for insects or vermin or disease, or otherwise create a health or safety hazard.

27 **SMOKING TOBACCO PRODUCT.** Tobacco leaves smoked in the form of a
28 cigar or cigarette.

29 **VEHICLE.** Every device in, upon, or by which any person or property is or
30 may be transported or drawn upon a highway, including devices used
31 exclusively upon stationary rails or tracks.

32 **WEEDS.** All rank, noxious, poisonous, harmful, unhealthful vegetation,
33 deleterious to health, and shall include the following named plants:

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

- 1 (1) Pigweed (*Amaranthus retroflexus*).
- 2 (2) Russian Thistle (*Salsola pestifer*).
- 3 (3) Ragweeds (*Ambrosia spp.*).
- 4 (4) Lambsquarter. (*Kenopodium spp.*).
- 5 (5) Kochia.
- 6 (6) London Rocket (*Sisymbrium irio*).
- 7 (7) Flix Weed (*Descurainia sophia*).
- 8 (8) Tansy Mustard (*Descurainia pinnata*).
- 9 (9) Spurge.
- 10 (10) Silverleaf Nightshade (*Solanum elaeagnifolium*).
- 11 (11) Puncture Vine.
- 12 (12) Field Bind Weed (*Convolvulus arvensis*).
- 13 (13) Purslane.
- 14 (14) Hoary Cress.
- 15 (15) Yellow Foxtail (*Setaria glauca*).
- 16 (16) Green Foxtail (*Setaria Viridis*).

17 The Mayor's designee is hereby authorized and delegated the authority and
18 duty to determine if any other plants, due to their unhealthy or dangerous
19 attributes or consequences, should be placed on the list of weeds as defined
20 herein and shall put such plants on said list if, after a hearing based on the
21 evidence before him it appears that such plants do come within the meaning
22 of the term weeds as hereinbefore set out."

23 SECTION 3. § 9-8-8 of the Albuquerque Weed and Anti-Litter Ordinance is
24 hereby amended as follows:

25 "§ 9-8-8 MERCHANTS' DUTY TO KEEP SIDEWALKS AND PARKING AREAS
26 FREE OF LITTER.

27 It shall be the responsibility of the person in charge of a place of business to
28 maintain the sidewalk area adjacent to his place of business and his private
29 parking area, if any, used by his patrons for parking, in a reasonably litter free
30 condition. If, in the opinion of the Mayor's designee, the amount of litter in
31 said areas amounts to a nuisance due to odors or eyesore characteristics the
32 Mayor's designee shall notify the person in charge to provide adequate,
33 approved litter receptacles located so as to be convenient to the patrons of

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 the place of business and/or to parking areas. The person in charge of such
2 business shall be responsible for providing said litter receptacles and be
3 responsible for emptying such containers as often as is necessary to prevent
4 their becoming a nuisance. In no event shall the litter located on sidewalks
5 and driveways adjacent to a place of business be allowed to be swept into the
6 gutters or streets of the city.”

7 SECTION 4. §§ 9-8-25 et seq. of the Albuquerque Weed and Anti-Litter
8 Ordinance are hereby amended as follows:

9 “§ 9-8-25 NOTICE TO CUT AND REMOVE.

10 If the provisions of this article regarding removal of weeds or litter are not
11 complied with, the Mayor’s designee or his authorized representative shall
12 notify the owner of any occupied or unoccupied lot or tract of land to comply
13 with the provisions of this article. The notification to the owner of any such lot
14 or tract of land shall be in writing. In the event such owner of such lot or tract
15 of land cannot be determined or the owner shall be a nonresident of the City,
16 such notice may be served by posting a copy of the written notice upon the
17 premises.

18 § 9-8-26 WHEN CITY TO REMOVE.

19 Where compliance with the provisions set forth in the notice has not
20 occurred within ten days, the Mayor’s designee shall cause such weeds to be
21 cut and the cuttings or any accumulation of weeds or litter removed. Should it
22 appear to be a matter of public necessity for health or safety reasons, the
23 Mayor’s designee may give notice that the weeds or litter must be cut or
24 removed immediately, in which event, should there be noncompliance, the
25 Mayor’s designee is authorized to cause such weeds to be cut and the
26 cuttings or any accumulation of weeds or litter removed immediately. The
27 actual cost of the cutting or removal of weeds or litter plus any other penalties
28 or costs allowed by law in connection therewith, under any of the
29 circumstances herein set out, shall become a lien upon the property from
30 which such weeds or litter were removed in the manner prescribed by law.

31 § 9-8-27 METHOD OF REMOVAL.

32 The approved methods of controlling weeds shall be mowing, cutting,
33 digging, or other methods designed to remove the weeds but not disturb other

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 vegetation or unnecessarily disturb the soil. The scraping and tillage of lots
2 and tracts of land is prohibited unless permission of the Mayor's designee is
3 first obtained; except, that scraping and tillage as part of normal construction
4 activities or as ground preparation for agriculture or landscaping activities
5 shall be allowed. The Mayor's designee shall allow scraping and tillage of lots
6 or tracts of land when this will not detract from or violate the clear intent and
7 purpose of this article.

8 **§ 9-8-28 PENALTY.**

9 (A) Any person who violates any of the provisions of this article, excluding
10 § 9-8-32, shall be deemed guilty of a petty misdemeanor and, upon conviction
11 thereof, shall be subject to the penalty provisions set forth in § 1-1-99 of this
12 code of ordinances to include a minimum fine of \$250. Any person deemed
13 guilty of a subsequent violation shall be subject to a minimum fine of \$350 and
14 then \$500 for each violation thereafter. Community service may be imposed in
15 lieu of or in addition to any such fine. Every violation shall be a separate
16 misdemeanor.

17 (B) Any person who violates the provisions of § 9-8-32 regarding smoking
18 tobacco product litter shall be subject to the penalty provisions set forth in
19 § 1-1-99 of this code of ordinances to include a minimum fine of \$250. Any
20 person deemed guilty of a subsequent violation of § 9-8-32 shall be subject to
21 a minimum fine of \$500 for each violation thereafter.

22 (C) The Department may impose a civil fine for violations of this article that
23 have not been adequately cured within a reasonable time after an initial Notice
24 to Cut and Remove, pursuant to Section 9-8-25. The amount of the fines are:
25 \$200 for a first violation of this article; \$300 for a second violation of this
26 article; and \$500 for a third or subsequent violation of this article. Notice of the
27 civil fine shall be appealable under the administrative appeal procedures of
28 this article. Failure to pay the fine, appeal the fine, or prevail at an
29 administrative hearing challenging the fine shall allow the Department to place
30 a lien upon the subject property or any other asset owned by the subject
31 property's owner. The Department may also choose to collect on the fine
32 through any other method allowed by law.

33 **§ 9-8-29 NOTICE OF CIVIL FINE.**

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (A) General. When the Department imposes a civil fine for violations of
2 this article, the Department shall issue a notice of civil fine directed to the
3 owner of the subject property, their agent and/or responsible party, and, where
4 appropriate, to the occupant of the subject property as shown on the records
5 of the Bernalillo County Assessor and the Department's records. The notice of
6 civil fine shall contain:

7 (1) The street address and a legal description sufficient for identification
8 of the premises upon which the building is located;

9 (2) A statement that the Department has found the subject property to
10 be in violation of this article;

11 (3) A concise description of the conditions found to render the subject
12 property dangerous under the provisions of this code;

13 (4) The amount of the fine assessed;

14 (5) A statement that the fine must be paid in full within thirty (30) days of
15 the date of the notice;

16 (6) Instructions for how the fine can be paid; and

17 (7) A statement advising that any person having any title or legal
18 interest in the subject property may appeal from the notice of civil fine to the
19 Office of Administrative Hearings, provided the appeal is made in writing as
20 provided in this code, and filed with the Office of the Administrative Hearings
21 within seven days of service of notice and order, and that failure to timely
22 appeal the notice of civil fine shall constitute a waiver of the right to appeal.

23 (B) Method of Service.

24 (1) Service of the notice of civil fine shall be made upon all persons
25 entitled to notice either personally or by mailing a copy of such notice and
26 order by certified mail, postage prepaid, return receipt requested, to each such
27 person and owner, responsible party or identified agent at his address as
28 shown on the records of the Bernalillo County Assessor or as known to the
29 Department. If no address of any such person so appears or is known to the
30 Department, then a copy of the notice of civil fine shall be so mailed,
31 addressed to such person, at the address of the building involved in the
32 proceedings and posted thereon.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (2) The failure of any such person to receive such notice shall not affect
2 the validity of any proceedings taken under this section. Service by certified
3 mail in the manner herein provided shall be effective on the date of mailing.

4 (C) Proof of Service. Proof of service of the notice of civil fine shall be
5 certified by a written affidavit executed by the person effecting service,
6 declaring the time, date and manner in which service was made. The
7 declaration, together with any receipt card returned in acknowledgement of
8 receipt by certified mail shall be affixed to the copy of the notice and order
9 retained by the Department.

10 § 9-8-30 APPEAL PROCEDURE ADMINISTRATIVE HEARING.

11 The owner may appeal the determination of the need for weed or litter
12 removal or a civil fine issued pursuant to this article. The request for appeal
13 and the hearing shall comply with the procedures outlined in the Independent
14 Office of Hearings "IHO" Ordinance, ROA 1994, Sections 2-7-8-1 to -9.

15 § 9-8-31 JUDICIAL REVIEW.

16 The exclusive remedy for parties dissatisfied with the action of the City
17 Hearing Officer shall be the filing of a petition for a writ of certiorari with the
18 State District Court. The petition for review shall be limited to the record made
19 at the administrative hearing held pursuant to this article.

20 § 9-8-32 REMOVAL UPON DEFAULT OF OWNER.

21 After said hearing if removal has not been commenced or prosecuted to
22 completion with due diligence as required by the written hearing decision, the
23 Mayor's designee shall commence removal upon the premises as set forth in
24 § 9-8-26.

25 § 9-8-33 ILLEGAL COMMERCIAL HANDBILLS PREVENTION.

26 (A) The Mayor's designee shall create and maintain a 24-hour seven-day
27 per week hotline and website for individuals to report commercial handbills in
28 public places.

29 (B) The Mayor's designee shall implement a public outreach program to
30 educate the public about the penalties for illegally posting commercial
31 handbills in public places.

32 (C) The Mayor's designee shall initiate a kiosk program to prevent the
33 illegal distribution of commercial handbills. The City kiosk program shall

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 permit kiosks on public rights-of-ways and City owned property where
2 deemed appropriate by the Mayor's designee in exchange for a reasonable
3 fee.

4 **§ 9-8-34 SMOKING TOBACCO PRODUCT LITTER.**

5 No person shall dispose of any portion of a smoking tobacco product except
6 in public receptacles or in appropriate private receptacles. Any smoking
7 tobacco product previously lit shall be extinguished prior to disposal."

8 **SECTION 5. § 9-2-1-4 and § 9-2-1-5 of the Humane and Ethical Animal Rules**
9 **and Treatment (HEART) Ordinance are hereby amended as follows:**

10 **"§ 9-2-1-4 DEFINITIONS.**

11 For the purpose of this article, the following definitions shall apply unless
12 the context clearly indicates or requires a different meaning:

13 **AACC.** Albuquerque Animal Care Center.

14 **AACC VETERINARIAN.** A Veterinarian employed by the City and assigned to
15 AACC.

16 **AACC WEBSITE.** An Internet site maintained by AACC.

17 **ABANDONMENT.** An Owner's intentional act of abdicating reasonable care
18 or control of an Animal in a location where any reasonable person would know
19 the Animal has little chance of finding food, Potable Water or shelter.

20 **ADEQUATE SHELTER.** A structurally sound, adequately ventilated,
21 weatherproof structure that is comprised of non-toxic materials and interior
22 floors that minimize injury and discomfort to the Animal. The structure must
23 be clean and of a suitable size as to limit overcrowding by properly
24 accommodating the specific Animal. The structure must protect the Animal
25 from extreme conditions. The Animal must be able to lie down fully and rise to
26 its feet, in a natural manner, consistent with the Animal's species. An
27 Adequate Shelter must be within a Secure Fence.

28 **ADMINISTRATIVE HEARING.** The process by which any grievance under this
29 article is resolved by adjudication.

30 **ADMINISTRATIVE HEARING OFFICER.** The City Hearing Officer, as defined
31 by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA
32 1994).

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **ADOPTION.** The transfer of ownership of an Animal Impounded at AACC to a
2 Qualified Adopter.

3 **AGGRESSIVE.** With respect to a Companion Animal in the care of AACC,
4 that the Companion Animal is objectively observable as unnaturally hostile or
5 violent toward humans when unprovoked according to a comprehensive
6 checklist of observable objective characteristics of the Companion Animal
7 compiled by two or more Independent Observers conducting evaluations at
8 different times and with respect to a Companion Animal not in the care of
9 AACC, that the Companion Animal is objectively observable as unnaturally
10 hostile or violent toward humans when unprovoked according to the
11 perspective of any reasonable Person objectively observing the Companion
12 Animal.

13 **ALBUQUERQUE ANIMAL CARE CENTER or AACC.** Any City of Albuquerque
14 Animal Welfare Department (AWD) premises, locations or buildings
15 designated as suitable by the Mayor's designee for the care, custody and
16 maintenance of Animals seized by the City.

17 **ALTER.** To render an Animal incapable of reproduction.

18 **AMERICAN VETERINARY MEDICAL ASSOCIATION.** Not-for-profit
19 association representing more than 72,000 Veterinarians, the goal of which is
20 improving Animal and human health and advancing the Veterinary medical
21 profession.

22 **ANIMAL.** Any living nonhuman mammal, bird, reptile, or amphibian including
23 bats, Companion Animals, Companion Birds, Domestic Animals, Exotic or
24 Wild Animals, Livestock, pigeons, porcupines, Poultry, prairie dogs, rabbits
25 and skunks. For the purpose of this article, insects and arachnids are not
26 included in the definition of **ANIMALS**.

27 **ANIMAL BROKERS.** Individual who or group which deals in regulated
28 Animals but does not take physical possession. Must be licensed through the
29 USDA. Sometimes known as "bunchers", unscrupulous brokers are known to
30 pose as loving adopters, even bringing children with them when responding to
31 "free to good home" ads in local newspapers.

32 **ANIMAL SERVICE OFFICER or ASO.** Any Person employed by the City,
33 assigned to AACC and charged by the Mayor's designee with enforcement of

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

- 1 this article in the field and to perform other duties as assigned by the Mayor's
- 2 designee.
- 3 ***ANIMAL-DRAWN VEHICLE.*** Any vehicle pulled by an Animal.
- 4 ***ANIMAL-DRAWN VEHICLE PERMIT or ADVP.*** A Permit allowing a Person to
- 5 attach an Animal to a vehicle for the purpose of moving the vehicle.
- 6 ***ANIMAL EXHIBIT.*** A Companion Animal or Companion Bird show, petting
- 7 zoo, pony ride, rodeo or other Animal activity operated for the purposes of
- 8 showing Animals. Prohibited Exotic or Wild Animals are forbidden in Animal
- 9 Exhibits.
- 10 ***ANIMAL FIGHTING PARAPHERNALIA.*** Equipment that any reasonable
- 11 Person would ascertain is used for Animal fighting purposes, including:
- 12 (1) Instruments designed to be attached to the leg of a bird, such as a
- 13 knife, gaff or other sharp instrument;
- 14 (2) Items to train and condition dogs to fight, including hides or other
- 15 material used as hanging devices to strengthen or condition dogs, wooden
- 16 sticks or handles used to pry open dog's jaws, performance enhancing drugs
- 17 or substances, or food or water additives; and
- 18 (3) The presence of any dog that appears to be a fighting dog alone or
- 19 together with Animals suspected of being used as Bait Animals, including
- 20 rabbits, cats and other dogs.
- 21 ***ANIMAL HANDLER.*** Any Person employed by the City, assigned to AACC
- 22 and charged by the Mayor's designee to humanely receive, inspect, feed,
- 23 clean and care for Animals Impounded at AACC, to assist the public and
- 24 Rescue Groups in viewing and selecting Companion Animals and to perform
- 25 other duties as assigned by the Mayor's designee.
- 26 ***ANIMAL HEALTH TECHNICIAN or VET TECH.*** Any Person employed by the
- 27 City, assigned to AACC and charged by the Mayor's designee to assist the
- 28 AACC Veterinarian.
- 29 ***ANIMAL POSSESSION LIMITS.*** The number of Animals allowable at one
- 30 Household without generating the need for a Multiple Animal Site Permit.
- 31 ***ANIMAL SERVICE PROVIDER.*** Any Establishment that takes temporary
- 32 possession of an Animal from the Owner, not on the Owner's property, to
- 33 perform a service for the Animal or Owner, including Grooming Parlors,

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 Animal Day Care establishments and Boarding Kennels, but excluding Pet
2 Stores. **ANIMAL SERVICE PROVIDER** does not include a licensed Veterinarian.

3 **ANIMAL SHELTER.** A pound, lot, premises or building maintained by the City
4 or a private organization, for the care and custody of animals.

5 **ANTI-RABIES VACCINATION.** Inoculation with an anti-rabies vaccine
6 recognized and approved by the State of New Mexico and given in an amount
7 sufficient to provide immunity from rabies for a minimum of one year.

8 **AT LARGE.** An Animal, on or off the Owner's premises, that is not contained
9 by a Secure Fence, a Secure Facility, a Secure Enclosure, secured in the back
10 of a pickup truck, inside a vehicle with proper ventilation or restrained on a
11 leash no longer than eight feet held by a responsible Person capable of
12 controlling the Animal. Verbal commands do not constitute control of an
13 Animal. An At Large Animal is in violation of the leash law.

14 **BAIT ANIMAL.** An Animal used to train or condition other Animals to fight
15 and includes living dogs, cats and rabbits exposed to attack by other dogs
16 used or trained to be used in dog fighting or to make the attacking Animal
17 more confident and Aggressive.

18 **BASIC GROOMING.** Examination, attention and acts reasonably necessary to
19 maintain the eyes, ears, beaks, hooves, feet, coat and skin of an Animal in
20 healthy condition. Basic Grooming also obligates an Owner to provide any
21 and all materials an Animal requires for self-grooming. **BASIC**
22 **GROOMING** does not include acts to maintain appearance only.

23 **BASIC MEDICAL CARE.** Reasonable medical care required by the species,
24 including periodic examinations by a Veterinarian, prompt Veterinary care
25 when required, age and species appropriate Vaccinations, Basic Grooming
26 and internal and external Parasite Control where appropriate.

27 **BITE.** A puncture or tear of the skin inflicted by the teeth of a Companion
28 Animal.

29 **BITTERING AGENT.** Nontoxic substance added to palatable toxic
30 substances, including antifreeze, to make those substances unpalatable to
31 Animals and humans. It is important to note that this additive does not change
32 the toxic nature of antifreeze.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **BOARDING KENNEL.** An Establishment where Animals are housed overnight
2 for the benefit of the Owner but does not include Guard Dog Sites, state
3 inspected Veterinary hospitals, Pet Stores, or Zoos.

4 **BONA FIDE ANIMAL SHOW.** An exhibition approved by the Mayor's designee
5 of Companion Animals, Companion Birds or Horses in competition for prizes
6 or awards that does not include sales or fighting.

7 **CAGE.** A structure for confining birds or animals, enclosed on at least one
8 side by a grating of wires or bars that lets in air and light.

9 **CHAIN.** A chain, tether or other device used to restrain an animal when the
10 Animal is not accompanied by a Person.

11 **CHAINING or TETHERING.** Confining an Animal when unattended by an
12 individual with a tether, rope, chain, or other device to a doghouse, stake, tree,
13 structure or other stationary object.

14 **CHEMICAL RESTRAINT DRUG.** Any drug administered to a Companion
15 Animal prior to Euthanasia to reduce aggressiveness, excessive mobility or
16 stress to the Companion Animal including ketamine, xylazine, and
17 acepromazine.

18 **CLERICAL WORKER.** Any Person employed by the City, assigned to AACC
19 and charged by the Mayor's designee to provide Adoption services to the
20 public, answer telephones, enter data or perform other duties as assigned by
21 the Mayor's designee.

22 **COCKFIGHT or COCKFIGHTING.** A fight arranged by a Person involving one
23 or more birds and that has the purpose or probable result of one bird inflicting
24 injury on or killing another bird.

25 **COMMERCIAL PROPERTY.** Any property not zoned for dwelling units under
26 the Integrated Development Ordinance. A vehicle or other temporary mobile
27 facility used for the purpose of doing business concerning or involving
28 Animals shall also be deemed Commercial Property for the purposes of this
29 article.

30 **COMPANION ANIMAL.** A dog or cat that is not a Hybrid.

31 **COMPANION BIRD.** A bird commonly kept as a pet by humans and confined
32 on the property of the Owner, including parakeets, canaries, lovebirds,

- 1 finches, parrots, macaws, cockatoos, cockatiels, toucans and lorries, but
2 excluding:
- 3 (1) All of the family Anatidae (waterfowl);
 - 4 (2) All of the family Tetraonidae (grouse and ptarmigans);
 - 5 (3) All of the family Phasianidae (quail, partridges and pheasants);
 - 6 (4) All of the family Meleagridae (wild turkeys) except for the domestic
7 strains of turkeys;
 - 8 (5) All of the family Perdidae (francolins);
 - 9 (6) All of the family Gruidae (cranes);
 - 10 (7) All of the family Rallidae (rails, coots and gallinules);
 - 11 (8) All of the family Charadriidae (plovers, turnstones and surfbirds);
 - 12 (9) All of the family Scolopacidae (shorebirds, snipe, sandpipers and
13 curlews);
 - 14 (10) All of the family Recurvirostridae (avocets and stilts);
 - 15 (11) All of the family Phalaropodidae (phalaropes);
 - 16 (12) All of the family Columbidae (wild pigeons and doves) except for the
17 domestic strains of pigeons; and
 - 18 (13) Ducks, geese, chickens and other poultry.

19 **CONFISCATE.** A City official has Seized an Animal with the intent and
20 purpose to divest the Owner of all interest in the Animal and following the
21 procedures set forth in this article, to convey all rights, ownership and
22 interests in the Animal to the City of Albuquerque for the benefit of the Animal
23 and the public.

24 **CONSTRUCTIVE POSSESSION.** The exercise of dominion and control over
25 the location and treatment of property without taking physical possession of
26 the property.

27 **CRATE.** A device or structure designed for the temporary confinement of an
28 Animal.

29 **CRUELTY.** A Person intentionally killing an Animal without Lawful
30 Justification or mistreating, injuring, maiming, disfiguring, tormenting,
31 torturing, beating, mutilating, burning, scalding, poisoning, attempting to
32 poison or otherwise unnecessarily causing an Animal to suffer physical or
33 emotional harm. Any of the following is a separate act of Cruelty: failing to

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough-Material] - Deletion

1 provide necessary sustenance to an Animal under that Person's Custody or
2 control, failing to provide Adequate Shelter, failing to provide Potable Water,
3 failing to provide palatable, nutritious food of adequate quantity, taunting an
4 Animal, dyeing, or artificially coloring an Animal under the age of 12 weeks,
5 transporting an Animal in an open vehicle without proper restraints, leaving an
6 Animal in a vehicle when the temperature is such that it could cause pain or
7 suffering to the Animal. Abandonment or Neglect of an Animal is Cruelty.
8 Inaction of the Owner toward an Animal in need of Basic or Emergency
9 Medical Care is Cruelty. Surgery by a Veterinarian is not Cruelty but ear
10 cropping, de-barking, tail docking or Alteration by an individual who is not a
11 Veterinarian is Cruelty. Euthanasia by a Veterinarian or a Euthanasia Qualified
12 Employee of AACC shall not be deemed Cruelty provided it is carried out by
13 methods specified in this article or by other generally accepted methods. The
14 application of pesticides or rodenticides by a properly licensed professional is
15 not Cruelty.

16 **CUSTODY.** The possession, control over and responsibility for an Animal by
17 a Person who may or may not be the Owner.

18 **DEA.** Drug Enforcement Agency.

19 **DIRECTOR.** The Director of the Environmental Health Department of the City.

20 **DISPLAY.** Any exhibition, act, circus, ride, trade show, carnival, parade, race,
21 photographic opportunity, performance or similar undertaking in which
22 Animals are required to perform or participate for the intended amusement or
23 benefit of an audience.

24 **DOGGIE DAY CARE.** An Establishment that takes temporary possession of
25 an Animal to provide safety, comfort and socialization for the Animal.

26 **DOMESTIC ABUSE BOARDING.** A program at AACC where Animals owned
27 by a victim of a Domestic Abuse Situation may obtain temporary housing at
28 AACC.

29 **DOMESTIC ABUSE SITUATION.** Any situation defined in the Crimes Against
30 Household Members Act, §§ 30-3-10 NMSA 1978, et seq.

31 **DOMESTIC ANIMAL.** Any Animal whose psychology has been determined or
32 manipulated through selective breeding and which does not occur naturally in
33 the wild and includes ferrets, gerbils, guinea pigs, hamsters, horses, mice,

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 rabbits, donkeys, rats and kangaroo rats. All Companion Animals are
2 Domestic Animals but all Domestic Animals are not Companion Animals.

3 **EMERGENCY MEDICAL CARE.** The care required in response to a traumatic
4 injury or rapidly evolving health crisis concerning an Animal.

5 **ENVIRONMENTAL ENRICHMENT.** Safe products appropriate for the species
6 that will stimulate mental, physical and grooming activities for Animals.

7 **ESTABLISHMENT.** A place of business in a zone other than a Residential
8 Zone together with its grounds and equipment.

9 **ESTRUS.** The regularly recurring state rendering a female Animal capable of
10 accepting the male Animal for breeding and conception.

11 **EUTHANASIA.** The killing of an Animal in a manner commonly recognized as
12 humane and acceptable by local Veterinarians or HSUS. Intra-cardiac shots
13 are absolutely prohibited as a form of Euthanasia at AACC.

14 **EUTHANASIA AUTHORIZED.** Employees of AACC who have met the
15 necessary training requirements to perform Euthanasia and have been
16 authorized by the Person In Charge to humanely destroy the life of an Animal.

17 **EUTHANASIA QUALIFIED EMPLOYEE.** An AACC employee who is trained
18 and certified by HSUS to be qualified to perform Euthanasia and approved by
19 the Mayor's designee to perform Euthanasia at City facilities.

20 **EUTHANASIA ROOM.** A separate room at AACC facilities used to perform
21 Euthanasia and for no other purpose and which meets all the requirements set
22 forth in this article.

23 **EXOTIC or WILD ANIMALS.** Those species of Animals that are exotic to
24 humans. **EXOTIC ANIMALS** include any or all of the following orders and
25 families, whether bred in the wild or in captivity, and any or all hybrids. The
26 Animals listed in parentheses are intended to act as examples and are not to
27 be construed as an exhaustive list or limit the generality of each group of
28 Animals, unless otherwise specified:

- 29 (1) Class Mammalia
30 (a) Order Artiodactyla (hippopotamuses, giraffes, camels, deer, not
31 cattle or swine or sheep or goats)
32 (b) Order Carnivora

- 1 1. Family Felidae (lions, tigers, cougars, leopards, ocelots, servals, not
2 domestic cats)
- 3 2. Family Canidae (wolves, coyotes, foxes, jackals, not domestic dogs)
- 4 3. Family Ursidae (all bears)
- 5 4. Family Mustelidae (weasels, skunks, martens, minks, not ferrets)
- 6 5. Family Procyonidae (raccoons, coatis)
- 7 6. Family Hyaenidae (hyenas)
- 8 7. Family Viverridae (civets, genets, mongooses)
- 9 (c) Order Edentata (anteaters, armadillos, sloths)
- 10 (d) Order Marsupialia (opossums, kangaroos, wallabies, not sugar
11 gliders)
- 12 (e) Order Perissodactyla (rhinoceroses, tapirs, not horses or donkeys or
13 mules)
- 14 (f) Order Primates (lemurs, monkeys, chimpanzees, gorillas)
- 15 (g) Order Proboscidea (elephants)
- 16 (h) Order Rodentia (squirrels, beavers, porcupines, not guinea pigs, or
17 rats, or mice, or gerbils, or hamsters)
- 18 (2) Class Reptilia
- 19 (a) Order Squamata
- 20 1. Family Varanidae (only water monitors and crocodile monitors)
- 21 2. Family Iguanidae (only green iguanas and rock iguanas)
- 22 3. Family Boidae (all species whose adult length has the potential to
23 exceed eight feet in length)
- 24 4. Family Colubridae (only boomslangs and African twig snakes)
- 25 5. Family Elapidae (coral snakes, cobras, mambas) - All species
- 26 6. Family Nactricidae (only keelback snakes)
- 27 7. Family Viperidae (copperheads, cottonmouths, rattlesnakes) - All
28 species
- 29 (b) Order Crocodylia (crocodiles, alligators, caimans, gavials) - All
30 species
- 31 (c) Order Cetacea (whales, dolphins, porpoises)
- 32 (d) Order Pinnipedia (seals, sea lions, walruses)

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **EXOTIC OR WILD ANIMAL COLLECTION PERMIT or EWACP.** The Permit
2 allowing a Person to own a Permissible Exotic or Wild Animal within the
3 Albuquerque City Limits.

4 **EXTREME CRUELTY.** A Person is guilty of Extreme Cruelty to Animals if a
5 Person intentionally or maliciously tortures, mutilates, injures or kills an
6 Animal, or if a Person poisons an Animal. Extreme Animal Cruelty is governed
7 by §§ 30-18-1 NMSA 1978 et seq. and is a Fourth Degree Felony, punishable by
8 a fine up to \$5,000 and 18 months imprisonment.

9 **FACILITY-WIDE CONTAGION.** The presence of any disease at AACC which
10 could be passed from one Animal to another or to humans to a degree not
11 ordinarily found in nature and exacerbated by the close proximity of large
12 numbers of Animals at AACC.

13 **FIGHTING BIRD.** A bird that is possessed, reared or trained for use in, or that
14 is actually used in, a Cockfight or any other fight or contest involving Animals.

15 **FIGHTING DOG.** A dog that is trained for use in, or that is actually used in a
16 fight with other dogs or any other Animal.

17 **FINDER.** Any Person who discovers and temporarily takes possession of a
18 Companion Animal that has been separated from its Owner.

19 **FOSTER.** To take temporary Custody of any Animal with the approval of or at
20 the request of AACC to administer veterinary care, groom, train, provide
21 special feeding, care for or otherwise provide for the Animal.

22 **FOSTER CARE PROVIDER.** Any Person who fosters an Animal from or
23 through AACC to lend aid and comfort and to otherwise assist in making the
24 Animal Adoptable or, in the case of Domestic Abuse Boarding, to provide a
25 safe, homelike environment to minimize the negative effects on the Animal of
26 being separated from its family.

27 **FOUND COMPANION ANIMAL.** A Stray Animal that is temporarily possessed
28 by a Person who has registered with AACC to hold the Animal for Reclaim by
29 the Owner or subsequent disposition as provided in this article.

30 **GAFF.** An artificial steel spur designed for attachment to the leg of a Fighting
31 Bird.

32 **GROOMING PARLOR.** An Establishment that is maintained in whole or in
33 part for the purposes of performing cosmetological services for Animals.

1 **GUARD DOG.** A dog that is used to protect a Guard Dog Site.

2 **GUARD DOG SITE.** An Establishment that utilizes a Guard Dog.

3 **GUARD DOG SITE PERMIT or GDSP.** The Permit required for a Guard Dog
4 Site.

5 **HARNESS.** With respect to a dog, a properly fitting apparatus that is not
6 abrasive and that restrains the dog by the body and shoulders without the
7 involvement of the neck. With respect to a cat, a properly fitting apparatus that
8 is not abrasive featuring adjustable collar buckles around the neck that are
9 joined to an adjustable girth.

10 **HEALTHY.** That an Animal is free from disease and not suffering from any
11 objectively observable illness.

12 **HOUSEHOLD.** A human social or family unit comprised of Persons living,
13 residing and domiciled in the same residence.

14 **HSUS.** The Humane Society of the United States or its successor entities.

15 **HYBRID.** An Animal created by breeding Animals of different species. Dogs,
16 wolves and coyotes are different species for purposes of this definition.

17 **IDENTIFIED.** A Companion Animal that has an affixed License Tag,
18 Microchip, Tattoo or other indication of the Owner sufficient for AACC or any
19 other Person to contact the Owner or is known to an ASO or other AACC
20 employee.

21 **ILLNESS.** A malady, injury, impairment, or physical/mental condition that
22 requires veterinary care.

23 **IMPOUND.** Receipt of an Animal by AACC for processing as provided in this
24 article.

25 **INDEPENDENT OBSERVER.** A Person who evaluates a dog for Aggressive
26 behavior without knowing about the conclusions or observations of another
27 Person who has also evaluated the dog. **INDEPENDENT OBSERVER** shall also
28 mean a Person who evaluates a dog with no predisposition or prejudice
29 concerning the dog and who is free from influence by any third Person
30 desiring any certain outcome of the assessment.

31 **INJURED.** The condition of an Animal's being harmed, disabled or impaired
32 in a physical sense which is determined by the reasonable objective

1 observation of wounds, injured limbs, broken bones, or disfiguring
2 lacerations.

3 **INTACT.** A dog or a cat over six months old that has not been Altered.

4 **INTACT COMPANION ANIMAL PERMIT or ICAP.** The annual Permit issued to
5 the Owner of a Companion Animal that has not been Altered.

6 **INTACT COMPANION ANIMAL SITE.** Any residence, building or other
7 structure in a Residential Zone that is used in whole or in part to house or
8 keep an Intact Animal.

9 **INTAKE AREA.** The area set aside at each AACC facility where Animals are
10 dropped off by the public, surrendered by the Owner, or brought in by Animal
11 Service Officers or other public safety personnel.

12 **INTAKE DAY.** The first day of arrival of an Animal at AACC during which time
13 the Animal goes through the Intake Process.

14 **INTAKE PROCESS.** The procedure for receiving, documenting,
15 photographing, physically examining, vaccinating, de-worming and applying
16 parasite prevention to Animals that arrive at AACC, and includes all activities
17 between the time of arrival and the time the Animal is put in the Enclosure
18 where it will be housed while at AACC.

19 **INTENT TO ADOPT.** A document filed with AACC indicating that a Qualified
20 Adopter wants to Adopt a Companion Animal not currently available for
21 Adoption.

22 **LAWFUL JUSTIFICATION.** A strictly construed defense to a charge of Cruelty
23 based on an immediate need to defend a threatened Person or Animal from an
24 imminent attack by an Animal apparently capable of causing death or serious
25 bodily injury to the threatened individual or Animal.

26 **LEASH LAW.** Animals, other than wild animals not owned by any human,
27 must be restricted at all times by either a Secure Fence, a Secure Facility, a
28 Secure Enclosure, secured in the back of a pickup truck, inside a vehicle with
29 proper ventilation, or be on a leash no longer than 8 feet long accompanied by
30 a person able to control the Animal.

31 **LETHAL DRUG.** A chemical that causes the humane death of an Animal and
32 that is approved by the AACC Veterinarian and the Mayor's designee.

33 **LICENSE.** An Albuquerque Companion Animal License.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **LICENSE TAG.** The tag supplied by AACC or its agents that contains the
2 number of an Albuquerque Companion Animal License.

3 **LITTER.** One or more sibling offspring Companion Animal under six months
4 old.

5 **LITTER PERMIT.** Permit required when an Animal becomes pregnant.

6 **LITTER SURRENDER AGREEMENT.** An agreement between the Mayor's
7 designee or his or her designated representative(s) and the Owner of a Litter.

8 **LIVE HUMANE TRAP.** Any device designed to catch and restrict an Animal
9 without causing any harm to the Animal.

10 **LIVESTOCK.** Livestock as defined in the State Livestock Code and shall
11 include, but not be limited to, bison, buffalo, cattle, horses, donkeys, mules,
12 chickens, ducks, poultry, llamas, ostriches, emus, rheas, camelids (camels),
13 farmed cervidae, swine, sheep or goats.

14 **LOST AND FOUND PROGRAM.** An AACC program that focuses on reuniting
15 lost Animals with their Owners.

16 **LOW INCOME PERSON.**

17 (1) A Person who possesses:

18 (a) An EBT card issued by the State of New Mexico for Food Stamps;

19 (b) Either the annual letter of statement of benefits or monthly benefit
20 card for Supplemental Security Income;

21 (c) An EBT card issued by the State of New Mexico for the Temporary
22 Assistance for Needy Families program; or

23 (d) A Medicaid health benefit card; or

24 (2) A Person:

25 (a) Whose income is 50% or less of the median gross income for the
26 City adjusted for family size, as determined by the U.S. Department of Housing
27 and Urban Development or by figures obtainable from the Family and
28 Community Services Department of the City of Albuquerque or its successor
29 agencies; and

30 (b) Who signs and submits an affidavit to AACC swearing that his or her
31 income is 50% or less of the median gross income for the City, adjusted for
32 family size.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **MAYOR'S DESIGNEE.** The Mayor of the City of Albuquerque or his or her
2 designee.

3 **MEDICAL WAIVER CERTIFICATE.** A document written by a Veterinarian
4 stating why a Companion Animal should not be altered. Used in cases when
5 Alteration would pose a substantial threat to the health of the Animal.

6 **MICROCHIP.** A passive transponder which can be implanted in an Animal by
7 injection and which is a component of a radio frequency identification (RFID)
8 system, but excluding any system that is not compatible with the scanner
9 used by AACC.

10 **MODERATE INCOME PERSON.** Any Person:

11 (1) Whose income is 80% or less of the median gross income for the City
12 adjusted for family size, as determined by the U.S. Department of Housing and
13 Urban Development or by figures obtainable from the Family and Community
14 Services Department of the City or its successor agencies; and

15 (2) Who signs and submits an affidavit to AACC swearing that his or her
16 income is 80% or less of the median gross income for the City, adjusted for
17 family size.

18 **MULTIPLE COMPANION ANIMAL SITE or MCAS.** Property in a Residential
19 Zone upon which, by virtue of a Permit, the Owner is allowed to exceed the
20 authorized Companion Animal number limits authorized by this article.

21 **MULTIPLE COMPANION ANIMAL SITE PERMIT or MCASP.** The Permit
22 required to operate a Multiple Companion Animal Site.

23 **NEGLECT.** The failure of an Owner to provide care for an Animal in the
24 Owner's Custody which failure causes an Animal to suffer physical or
25 emotional harm.

26 **NIGHTTIME.** The period starting at 10:01 p.m. and ending at 7:00 a.m. the
27 following day.

28 **OWNER.** A Person who possesses an Animal and claims a legally valid right
29 of possession of an Animal superior to the rest of the world. Under this article,
30 any Person acting as the agent of the Owner and any Person over the age of
31 18 in a Household and left in charge of an Animal may be deemed the Owner.

32 **OWNER SURRENDER.** The relinquishment by the Owner of all rights in and
33 to an Animal to AACC.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **OWNER SURRENDER ACKNOWLEDGEMENT FORM.** The AACC form that an
2 Owner executes in order to relinquish an Animal to AACC.

3 **PARASITE CONTROL.** Eradication of pests such as insects, ticks, fleas,
4 worms, and other organisms living or seeking to live in or on an Animal.
5 Reasonable Parasite Control measures must be employed to eradicate
6 parasites from all areas an Animal has access to and from the body of the
7 Animal.

8 **PERMANENT IDENTIFICATION.** Companion dogs and cats required to have a
9 permanent, easily detectable, identification number applied by a Veterinarian
10 by means of a Microchip or Tattoo.

11 **PERMISSIBLE EXOTIC OR WILD ANIMALS.** Exotic or Wild Animals, the
12 Ownership of which does not violate state or federal law.

13 **PERMIT.** A document evidencing approval by the Mayor's designee to
14 conduct a certain activity or possess a certain Animal.

15 **PERMIT HOLDER.** A qualified person to whom a valid permit has been
16 provided.

17 **PERMITTED PREMISES.** The Establishment, residence, real property or other
18 site for which a valid Permit has been issued.

19 **PERSON.** An individual, firm, partnership, corporation, company, society,
20 association or legal entity, and every officer, agent or employee thereof.

21 **PERSON IN CHARGE.** The individual present or individual in apparent
22 supervision or control of a premise.

23 **PET STORE.** An Establishment that, in whole or in part, offers Animals, other
24 than Companion Animals, for sale or resale, or sells Animals to consumers or
25 wholesalers.

26 **PET STORE PERMIT or PSP.** A Pet Store Permit for Pet Stores that do not
27 sell Companion Animals.

28 **POLICE OFFICER.** Any sworn member of the Albuquerque Police
29 Department or any sworn officer of any other law enforcement agency
30 authorized and empowered to enforce or execute laws in the City.

31 **POSSESSION.** Custody of an Animal.

32 **POTABLE WATER.** Water that is safe for drinking.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **POULTRY.** Any bird that is kept as a pet or any bird that is commonly used
2 by humans for eggs or meat. Companion Birds are not considered Poultry in
3 this article.

4 **PROHIBITED EXOTIC or WILD ANIMALS.** Any Exotic or Wild Animal that is
5 unlawful to own, possess, keep, harbor, bring into the city, have in one's
6 possession or allow to breed under federal or state law.

7 **PROOF OF OWNERSHIP.** Any documentation or evidence which proved to
8 the satisfaction of the Mayor's designee that a Person is the Owner of an
9 Animal, including a Microchip identification, Veterinarian invoice, official
10 registration, or photographs of the Animal.

11 **PROTECTIVE CUSTODY.** The temporary control over and care of an Animal
12 at AACC.

13 **PROVOKED.** The response of an Animal that a reasonable Person believes
14 the Animal has taken to defend itself, its Owner or family member, or another
15 Person within its immediate vicinity from assault, actual or perceived, or to
16 defend real property belonging to its Owner or family member.

17 **QUALIFIED ADOPTER.** A Person who is 18 years of age or older, who has
18 never been convicted of any form of Cruelty under any law and in addition has
19 not been convicted two or more times for any violation of this article or its
20 predecessor ordinances, has never had any Animal-related Permit Revoked or
21 Suspended, has never failed to Reclaim an Animal from AACC, has not
22 Surrendered an Animal within one year of the time of Adoption and has never
23 been convicted of child or domestic abuse.

24 **QUARANTINE.** The segregation of an Animal for any time as required under
25 state law or this article in order to control the spread of rabies or contagious
26 illness.

27 **RABIES VACCINATION.** Inoculation with an anti-rabies vaccine recognized
28 and approved by the State of New Mexico and given in an amount sufficient to
29 provide immunity from rabies for a minimum of one year.

30 **RECLAIM.** An Owner's recovery of an Animal that has been Impounded at
31 AACC.

32 **REHABILITATORS.** Individuals who provide professional care to sick,
33 injured, and orphaned wild animals so they can ultimately be returned to their

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 natural habitats. Such rehabilitation is not an attempt to turn wild animals into
2 pets. Patients are held in captivity only until they are able to live independently
3 in the wild.

4 **RESCUE GROUP or RESCUE INDIVIDUAL.** Those groups or individuals
5 approved by the Mayor's designee for the purpose of Adopting Animals from
6 AACC at a reduced rate to provide needed medical, grooming, behavioral or
7 rehabilitative services in order to facilitate successful Adoptions of Animals.

8 **RESERVE ANIMAL SERVICE OFFICER or RESERVE ASO.** Any Person who
9 volunteers without compensation to assist ASOs in the field.

10 **RESIDENTIAL ZONE.** "Zone, Residential" as defined in the city's Integrated
11 Development Ordinance.

12 **RETURN BY ADOPTER.** That an Animal has been returned to AACC within
13 thirty days of Adoption.

14 **SAFE HAVEN.** The period of time when an Animal is exempt from
15 Euthanasia.

16 **SANCTUARY.** Areas protected through the management of human activities
17 to provide and maintain habitat, other wildlife, and the ecosystems that
18 support them. Inclusions: National Wildlife Areas, Migratory Bird Sanctuaries,
19 Conservation Areas and Marine Protected Areas.

20 **SECURE ENCLOSURE.** Cage or box, that may be portable, from which an
21 Animal is not able to escape or be invaded.

22 **SECURE FENCE.** A visible protective or confining barrier that prevents any
23 Animal, including Guard Dogs, from escaping the property on which the
24 Animal is being restricted. The Secure Fence shall also reasonably protect the
25 Animal within the fence from other Animals or people coming into contact with
26 the restrained Animal. This includes a dog run type structure.

27 **SECURE FACILITY.** A house or building in which an Animal is being
28 restricted that will prevent the Animal, including a Guard Dog, from being able
29 to escape.

30 **SEIZE.** To take Custody of an Animal with or without notice to the Owner or
31 the consent of the Owner. Exigent circumstances must exist if an Animal is
32 taken into Custody without notice to the Owner or the consent of the Owner.

33 **SENIORS.** Persons 65 years of age or older.

1 **SERVICE ANIMAL.** A dog trained or being trained by a recognized school for
2 training dogs to assist Persons with disabilities; an Animal recognized as a
3 Service Animal pursuant to the Americans with Disabilities Act of 1990; or any
4 other Animal approved by the Governor's Committee on Disability as
5 acceptable in public places and trained to provide some special assistance to
6 a Person with a disability.

7 **SEVERE MEDICAL CONDITION.** A condition that results in an Animal
8 requiring, permanently or for an extended period, a high level of constant care
9 to maintain comfort, sustain life, or attend to a bodily function that the Animal
10 cannot manage itself.

11 **SLASHER.** A steel weapon resembling a curved knife blade designed for
12 attachment to the foot of a Fighting Bird.

13 **SPRING LOADED TRAP.** Any device used to capture an Animal by the leg or
14 any extremity by closing on the Animal by the action of a spring or any other
15 mechanism designed to hold, immobilize or otherwise automatically detain an
16 Animal for any purpose. The City does not consider this to be a humane trap.

17 **STAFFING LEVELS FOR ANIMAL CARETAKING.** The minimum number of
18 kennel staff that must be available at AACC according to the Animal
19 population at AACC as set forth in the October 2000 HSUS Report to the
20 Albuquerque Animal Services Division under the heading titled "Staffing
21 Levels for Animal Caretaking" at page 96 of said report and the minimum
22 number of ASOs that must be available according to the HSUS Report at page
23 159.

24 **STRAY.** An Animal that is At Large.

25 **SURRENDER.** The relinquishment of Ownership of an Animal to AACC by
26 the Owner of the Animal.

27 **TATTOO.** An indelible mark placed on an Animal to serve as Permanent
28 Identification.

29 **TIME.** Days spent at AACC.

30 **TREATABLE ILLNESS.** An illness, injury, impairment, or physical/mental
31 condition that can be reasonably treated using proper medication.

32 **TROLLEY.** A cable strung between two fixed and stable points, to which a
33 dog on a short lead is attached, allowing for freedom of movement.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **TROLLEY PERMIT.** A permit issued by the City authorizing the use of a
2 Trolley. In order to obtain a Trolley Permit, the applicant must prove that all
3 other means of restricting the Animal to the personal property have been
4 exhausted.

5 **UNIDENTIFIED.** An animal that has no identification sufficient to allow AACC
6 to determine the Owner’s identity.

7 **USDA.** The United States Department of Agriculture or its successor.

8 **VACCINATION or VACCINATE.** Administer a vaccine to an Animal, including
9 rabies, distemper, parvo, para influenza, corona virus or bordatella and other
10 vaccines deemed necessary from time to time by the Mayor’s designee.

11 **VERMIN.** Wild rodents and various insects including flies, mosquitoes, ants
12 and wasps.

13 **VETERINARIAN.** A Doctor of Veterinary Medicine licensed to practice in the
14 State of New Mexico.

15 **VETERINARY EMERGENCY CLINIC or VEC.** Any entity which contracts with
16 the City for Veterinarian services.

17 **VOLUNTEER.** Any Person who performs any Animal services function or
18 assists any AACC employee without compensation.

19 **VOLUNTEER COORDINATOR.** A person employed by the city, of at least
20 class M-14, assigned to AACC for the purpose of recruiting and maintaining a
21 cadre of highly committed volunteers.

22 **WOLF HYBRID.** The offspring of a domesticated dog that has been bred with
23 a wolf.

24 **WORKING DAYS.** The days AACC is open to the public.

25 **ZOO.** The Rio Grande Zoological Park and other zoos accredited by the
26 American Zoological Association.

27 **§ 9-2-1-5 ADMINISTRATION.**

28 **Rules and Regulations.** Reasonable rules and regulations may be prescribed
29 by the Mayor’s designee to carry out the intent and purpose of this article,
30 pursuant to standards created by this article.”

31 **SECTION 6. § 9-2-2-1(C)(1) is hereby amended as follows:**

1 “(C) *Required Alteration of Companion Animals.* All dogs and cats over
2 the age of six months shall be Altered by a Veterinarian except as provided
3 herein.

4 (1) Owners of Companion Animals may seek an exemption from this
5 regulation if Alteration would be dangerous for the Companion Animal due to
6 advanced age or health issues. The Mayor’s designee may grant this
7 exemption if the Owner of the Animal can provide proof in the form of a letter
8 from a Veterinarian stating such reasons.”

9 SECTION 7. § 9-2-2-6(B) is hereby amended as follows:

10 “(B) *Cars, Vans and RVs.* Animals riding inside vehicles that are not in
11 Crates or other enclosures must not be allowed access to a window opened
12 wide enough for the Animal to jump, fly or fall out. Animals left unattended in
13 cars, vans or RVs must have adequate ventilation to prevent the temperature
14 in the vehicle from rising high enough such that any reasonable Person would
15 know that the Animal would suffer from heat exposure. During the warmer
16 months, no amount of ventilation will keep the car from getting too hot. If the
17 Mayor’s designee determines that an Animal in a vehicle is in immediate
18 danger, the Mayor’s designee may enter the vehicle by whatever means
19 necessary, without being liable to the owner of the vehicle, and seize the
20 Animal.”

21 SECTION 8. § 9-2-3-2 through § 9-2-3-6 are hereby amended as follows:

22 “§ 9-2-3-2 PERMITS: GENERAL PROVISIONS.

23 (A) A Permit is not a property right.

24 (B) The Mayor’s designee can refuse to issue, revoke, suspend or modify
25 Permits and impose conditions or limits upon the issuance of Permits,
26 including the declaration of moratoria regarding issuance of Permits.

27 (C) Permits expire one year from the date of issue, unless otherwise
28 specifically provided in this article.

29 (D) The Mayor’s designee shall charge a reasonable inspection fee for
30 compliance inspections.

31 (E) Permits are not transferable or refundable.

32 (F) The Fees for Permits are as stated in §9-2-3-16 of this article.

33 § 9-2-3-3 PERMIT HOLDERS: GENERAL DUTIES AND REQUIREMENTS.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **Permit Holders must comply with all the requirements of this article, state**
2 **law, and federal law. Additionally, Permit Holders must comply with the**
3 **following duties and requirements. Any violation by a Permit Holder may**
4 **result in revocation, suspension or modification of the Permit.**

5 **(A) Permit Holders shall meet the standards of a Qualified Adopter.**

6 **(B) Permit Holders shall comply with all special requirements pertaining to**
7 **the type of Permit held.**

8 **(C) *Inspections.***

9 **(1) A permitted Establishment, other than a residence, shall allow entry**
10 **and inspection of the Permit Holder’s premises by the Mayor’s designee. Upon**
11 **presentation of proper identification, the Mayor’s designee shall be allowed to**
12 **enter any Permitted Establishment for the purpose of making an inspection of**
13 **the premises for compliance with this article or an inspection to ascertain the**
14 **existence or nonexistence of conditions dangerous to health or safety or**
15 **otherwise relevant to the public interest in conformance with the provisions of**
16 **the Public Health Act, NMSA 1978, §§ 24-1-1 et seq. (2006).**

17 **(2) The holder of a Permit pertaining to a permitted activity in a residence**
18 **may consent to an inspection but also has the right to deny entry for an**
19 **inspection or schedule the inspection at a convenient time and attempt to**
20 **prove compliance to the satisfaction of the Mayor’s designee by means other**
21 **than inspection. If the Mayor’s designee finds that the Permit Holder is not in**
22 **compliance, the Permit Holder may request an Administrative Hearing to prove**
23 **compliance to the satisfaction of the Administrative Hearing Officer. Nothing**
24 **herein limits the authority of the City or other law enforcement authority to**
25 **seek or obtain a search warrant if there is probably cause of crime on private**
26 **property or an inspectorial order for the purpose of ascertaining the existence**
27 **or nonexistence of conditions dangerous to health or safety or otherwise**
28 **relevant to the public interest.**

29 **(3) The Person in Charge of the Permitted Premises shall be allowed to**
30 **accompany the Mayor’s designee on his inspection.**

31 **(4) Upon completion of an inspection of a Permitted Premises, the**
32 **Mayor’s designee shall prepare a written inspection report stating whether the**

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 Permitted Premises is in compliance with or in violation of the requirements of
2 this article.

3 (5) If the Mayor's designee determines the Permitted Premises is not in
4 compliance with the provisions of this article, the report shall specify the
5 nature of the noncompliance.

6 (6) The Mayor's designee and the Person in Charge of the Permitted
7 Premises shall sign the inspection report.

8 (7) A copy of the inspection report shall be furnished to the Person in
9 Charge at the time of the inspection.

10 (8) All inspection reports for business Permitted Premises shall be posted
11 on the AACC Website.

12 (D) *Records.* The Mayor's designee shall be allowed to examine all records
13 pertinent to the origin, care and disposition of Animals owned by the Permit
14 Holder. A current record shall be kept which describes all Animals owned,
15 purchased or received by the Permit Holder and the disposition of each
16 Animal. Permit Holders shall promptly produce any and all documents
17 pertaining to medical care and ownership records for inspection upon request
18 of the Mayor's designee. Permit Holders who sell, give away, loan, transfer or
19 in any way alienate possession or ownership of an Animal shall keep records
20 containing the name and address of each recipient, the date of disposition and
21 the Permanent Identification of each Companion Animal. All required
22 documents shall be kept for three years after the death or other disposition of
23 any Animal owned by the Permit Holder.

24 (E) Permit Holders shall comply with all city ordinances including the
25 Integrated Development Ordinance and Noise Ordinance provisions that
26 pertain to Animals.

27 (F) Any Permitted Premises open to the public shall post a sign
28 conspicuously observable by the public which states that all Companion
29 Animals in the City must be spayed or neutered unless they possess an Intact
30 Animal Permit and they must be Microchipped or otherwise Permanently
31 Identified. Such signs shall be at least 8 ½ inches by 11 inches in size and
32 contain lettering at least 1 inch in height.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (G) Non-residential Permitted Premises shall post their Permit in a
2 conspicuous place.

3 (H) The Permit Holder shall notify the Mayor's designee of any changes
4 which may affect the status of the Permit and shall keep the Mayor's designee
5 informed of any changes in the Permit Holder's name, address, home and
6 business telephone numbers, location of the Permitted Premises, emergency
7 contacts and activities covered by the Permit.

8 (I) Both the Person in Charge of a Permitted Premises and the Owner of the
9 Permitted Premises shall be responsible for complying with this article.

10 § 9-2-3-4 PERMIT RENEWALS.

11 (A) An application for the renewal of a Permit shall be filed with AACC not
12 less than 30 days before the date the Permit expires.

13 (B) The application, inspection procedures and fees for Permit renewals
14 shall be the same as those for new applications.

15 (C) Failure to renew a Permit as specified shall result in the expiration of
16 the Permit. In addition to the renewal fee the Mayor's designee may charge a
17 late fee.

18 § 9-2-3-5 PERMIT APPLICATIONS.

19 (A) Applicants for any Permit shall meet the standards of a Qualified
20 Adopter.

21 (B) *Application Process.*

22 (1) The application form shall require the applicant to affirm under penalty
23 of perjury that the applicant meets the standards of a Qualified Adopter and to
24 provide information that is sufficient to assure the Mayor's designee that the
25 applicant has the knowledge and facilities adequate to care for the Animals
26 covered by the Permit in a manner that protects both the Animals and the
27 public.

28 (2) The application form shall require the applicant to supply the names,
29 addresses and phone numbers of two adults not living at the same address as
30 the applicant, or each other, for the purpose of being emergency contacts.
31 These people must agree to take responsibility for the Animals in the event the
32 Permit Holder becomes unable to take care of the Animals covered by their
33 Permit.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (3) No Person shall be issued a Permit if that Person is jointly interested
2 in the Permit or otherwise in privity with any Person who does not meet the
3 standards of a Qualified Adopter.

4 (4) Within 30 days of the receipt of a Permit application Mayor's designee
5 shall review the application and inspect the premises. The Mayor's designee
6 shall approve, conditionally approve or deny the Permit application and notify
7 the applicant in writing of the decision.

8 (5) The Mayor's designee may approve an application only after the
9 following determinations are made:

10 (a) the standards established by this article and other applicable laws
11 and regulations have been met;

12 (b) the issuance of a Permit will not result in activity which presents a
13 danger to the public health, safety or welfare; and

14 (c) the issuance of a Permit does not create a nuisance for any Person.

15 (6) If any affected party wishes to appeal the Mayor's designee's decision
16 regarding a Permit application, the party may request an Administrative
17 Hearing before the Administrative Hearing Officer.

18 § 9-2-3-6 INTACT COMPANION ANIMAL PERMIT OR ICAP.

19 Owners of dogs and cats over the age of six months that have not been
20 Altered shall obtain an Intact Companion Animal Permit for those Animals.

21 (A) All Intact Companion Animals must be Permanently Identified by a
22 Microchip or other identification method acceptable to the Mayor's designee
23 and registered with the AACC before an ICAP can be issued.

24 (B) No Person shall have more than four Intact Companion Animals in any
25 Household.

26 (C) The Household shall be secure against ingress by Companion Animals
27 of the same species or egress of the Companion Animal for which the ICAP is
28 issued. The Household shall meet the standards of a Secure Facility or a
29 Secure Fence.

30 (D) If an Intact Companion Animal that has been issued an ICAP is
31 Impounded twice by AACC, the ICAP will be automatically revoked and the
32 Intact Companion Animal will be required to be Altered. If an Intact Companion

1 Animal is Impounded twice and must therefore be Altered, the Permit Holder
2 shall pay AACC to Alter the Companion Animal.

3 (E) If an ICAP Holder wants to breed an Intact Companion Animal or if a
4 female Intact Companion Animal has been impregnated, the ICAP Holder must
5 obtain a Litter Permit prior to the birth of the Litter.

6 (F) *Medical Waiver Certificate.*

7 (1) If Alteration of a Companion Animal would endanger the health of the
8 Companion Animal due to age or Illness, a Veterinarian may complete a
9 Medical Waiver Certificate stating the reasons why the Companion Animal
10 should not be Altered.

11 (2) The Medical Waiver Certificate must include a description of the
12 Companion Animal, including the Permanent Identification information.

13 (3) Upon receipt of a Medical Waiver Certificate, the Mayor's designee
14 may request a second opinion from a different Veterinarian.

15 (4) The Mayor's designee may direct the AACC Veterinarian to examine
16 any Animal listed in a Medical Waiver Certificate if there appears to be an
17 abundance of Medical Waiver Certificates from one particular Veterinarian or
18 Veterinary clinic.

19 (5) If there is a difference of opinion between the two Veterinarians as to
20 whether the Companion Animal may be safely Altered, a written notice will be
21 provided to the Owner indicating that a Medical Waiver Certificate has been
22 rejected. The Owner will then be required to Alter the Animal or pay for an
23 Intact Companion Animal Permit. The decision to deny a Medical Waiver
24 Certificate due to a difference in professional opinions by two Veterinarians
25 may be subject to appeal by the Owner.

26 (6) Upon the acceptance of a Medical Waiver Certificate by AACC, the
27 Owner shall be issued an Intact Companion Animal Permit free of charge.

28 (7) Medical Waiver Certificates shall be valid for one year. Upon expiration
29 of the Medical Waiver Certificate, the Owner shall be required to reapply for
30 the Intact Companion Animal Permit.”

31 SECTION 9. § 9-2-3-8 (D) is hereby amended as follows:

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 “(D) No Person shall keep or maintain more than 15 Companion Animals at
2 any MCASP site, no more than four of which can be Intact. This limit may be
3 exceeded under special circumstances determined by the Mayor’s designee.”

4 SECTION 10. § 9-2-3-9 through § 9-2-3-10 are hereby amended as follows:
5 “§ 9-2-3-9 PERMISSIBLE EXOTIC OR WILD ANIMAL COLLECTION PERMIT OR
6 EWACP.

7 (A) Any Person who wishes to receive, purchase, own or keep 15 or more
8 Permissible Exotic or Wild Animals shall first obtain an Exotic or Wild Animal
9 Collection Permit (EWACP).

10 (B) The applicant shall supply AACC with a list of all Exotics owned by the
11 applicant. The EWACP Holder shall supply an updated list every year as part
12 of the Permit renewal process.

13 (C) Notwithstanding the foregoing, zoological parks, Rehabilitators licensed
14 through the State of New Mexico, Veterinary hospitals, and the humane
15 society shelters are excluded from the provisions of this section, provided
16 that the excluded facilities use protective devices adequate to prevent the
17 Exotic or Wild Animals from escaping or injuring the public and the Animals
18 will not be used in any kind of testing or experimentation. The city expects
19 these excluded entities to treat the Exotic or Wild Animals in their possession
20 in a humane manner as stated in this article.

21 (D) No Person shall own, harbor or keep any species in violation of federal
22 or New Mexico law.

23 (E) Exotic or Wild Animals shall never be released from captivity within the
24 city limits without written permission from the Mayor’s designee whether or
25 not the Owner has an EWACP.

26 (F) The Mayor’s designee may Seize the Exotic or Wild Animal for its
27 Owner’s failure to obtain an EWACP or comply with this article and such
28 Animal shall become the property of the city. The EWACP Holder or Owner of
29 the Exotic or Wild Animal is liable for any costs incurred by the city and such
30 costs may result in a lien being placed against the Exotic or Wild Animal.

31 (G) The Mayor’s designee shall use Seizure procedures which protect the
32 public, the Exotic or Wild Animal and other Animals. The Mayor’s designee

[Bracketed/Underlined Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 may convey an Exotic or Wild Animal in his possession to any Zoo, Sanctuary
2 or refuge or dispose of the Animal in a Humane Manner.

3 **§ 9-2-3-10 GUARD DOG SITE PERMIT OR GDSP.**

4 Any Person wishing to operate a Guard Dog Site shall obtain a Guard Dog
5 Site Permit (GDSP).

6 (A) Any Person wishing to operate a Guard Dog Site shall have a Tax ID
7 number and be registered under the Albuquerque Business Registration
8 Ordinance before applying for a GDSP.

9 (B) The Owner of the Guard Dog must have an Intact Companion Animal
10 Permit for each Intact dog.

11 (C) The GDSP attaches to the real property and the GDSP Holder may not
12 transfer Guard Dogs to a separate site lacking a GDSP.

13 (D) A GDSP will not be granted for property in a Residential Zone or within
14 250 feet of a school.

15 (E) When a Guard Dog is on duty outside of a building, the premises must
16 be enclosed by a Secure Fence.

17 (F) The escape of a Guard Dog from a Guard Dog Site is a violation of this
18 article and can constitute a basis for revocation of a GDSP and seizure of the
19 dog.

20 (G) If the Mayor's designee determines it is necessary to control noise at
21 the Guard Dog Site, the Mayor's designee may require the Owner of the site or
22 GDSP Holder to construct a barrier which breaks the Guard Dog's line of sight
23 to the exterior and adequately buffers the noise.

24 (H) The doors, windows, and all other openings to the outside of a building
25 where a Guard Dog is on duty must be secured to prevent its escape.

26 (I) The Guard Dog Site shall be posted with warning signs that are at least
27 12 inches by 12 inches.

28 (1) The warning signs shall state "Guard Dog" and "Guardia" and shall
29 show a picture of an aggressive dog.

30 (2) The warning signs shall be posted not more than 50 feet apart on the
31 exterior of the fences or walls surrounding the site, and shall be posted at all
32 exterior corners of the site and at every entrance to the site.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (J) Vehicles used to transport Guard Dogs shall be secured so the public is
2 protected from Injury, shall be constructed or modified to ensure that the
3 Guard Dog is transported in a safe, humane manner and that does not violate
4 §§ 9-2-2-6 et seq., and shall be posted with warning signs on each side of the
5 vehicle.

6 (K) A GDSP Holder shall not apply for a Litter Permit or Multiple Companion
7 Animal Site Permit for the Guard Dog Site. No breeding of Animals is allowed
8 at a Guard Dog Site.

9 SECTION 11. § 9-2-3-12 through § 9-2-3-14 are hereby amended as follows:
10 “§ 9-2-3-12 PET STORE PERMIT OR PSP.

11 Pet Stores shall not sell Companion Animals but may sell other living
12 creatures including fish, birds, rodents, insects, arachnids, reptiles and other
13 Permissible Exotic Animal.

14 (A) No Pet Store shall conduct business in the city without a Pet Store
15 Permit (PSP).

16 (B) The applicant for a PSP must have a valid Tax ID Number and a City of
17 Albuquerque Business Registration under the Business Registration
18 Ordinance before applying for a PSP.

19 (C) The PSP must attach to a specific real property commercial site.

20 (D) No PSP Holder may sell or offer for sale any Animal from a mobile
21 facility or at a site away from the PSP site.

22 (E) A PSP Holder shall not apply for or obtain an Intact Companion Animal
23 Permit, Litter Permit or Multiple Companion Animal Site Permit.

24 (F) PSP Holders are liable for the medical costs including medicine, up to
25 the amount the Animal was sold for, for any Animal that is diagnosed as sick
26 by a Veterinarian qualified for the species within one week from the date of
27 sale.

28 (G) The PSP Holder shall reimburse the patron the costs associated with
29 the sick Animal, up to the amount paid by the patron when the Animal was
30 purchased.

31 (H) The patron shall be allowed to keep the Animal, even if the PSP Holder
32 pays the medical costs.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (I) The patron or the PSP Holder may appeal to the Administrative Hearing
2 Officer if there is a dispute as to the fact of the illness or the amount of the
3 charges. If the PSP Holder does not prevail on appeal, the PSP Holder shall
4 reimburse the costs of the appeal to the patron.

5 (J) Thorough and accurate records for each Animal that passes through a
6 PSP site must be maintained and kept for three years and must be made
7 available upon demand by the Mayor's designee. These records shall include
8 the name, address and telephone number of each Person who bought an
9 Animal and information on where each Animal came from originally.

10 (K) Animals with known or suspected communicable diseases shall be
11 isolated, as appropriate, and treated as soon as possible.

12 (L) The daily use of antibiotics for preventative purposes, and not to treat a
13 specific illness or condition, is prohibited whether administered in food, water
14 or by any other method.

15 **§ 9-2-3-13 TROLLEY PERMIT.**

16 The Owner of a Dog who has exhausted all options for restricting its dog to
17 its property may apply for a one year Trolley Permit.

18 (A) The Mayor's designee may issue a Trolley Permit upon an applicant's
19 proving the following:

20 (1) All other methods of restricting the dog to the property of the Owner
21 have been exhausted.

22 (2) A Trolley is deemed the only acceptable temporary method to keep the
23 Animal on the Owner's property.

24 (3) The dog has been spayed or neutered and Microchipped.

25 (B) No more than one dog per Household will be allowed to use a Trolley.

26 (C) A dog attached to a Trolley shall be surrounded by a barrier sufficient to
27 protect the dog from At Large Animals. The barrier shall be sufficient to
28 prevent children from accidentally coming into contact with the dog on the
29 Trolley.

30 (D) No dog shall be left on a Trolley for longer than nine hours in a 24 hour
31 period.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (E) Trolley Permits are good for one year only, in which time the Owner
2 must come up with an acceptable method of restricting the dog to his
3 property. Trolley Permits will not be renewed.

4 (F) AACC shall work with various Animal volunteer organizations in order
5 to help Owners locate resources to deal with restraint issues.

6 **§ 9-2-3-14 ANIMAL-DRAWN VEHICLE PERMIT OR ADVP.**

7 Any Person intending to do business operating an Animal-Drawn Vehicle
8 shall apply for an Animal-Drawn Vehicle Permit (ADVP).

9 (A) Any person applying for an ADVP must have a valid Tax ID Number and
10 a City of Albuquerque Business Registration under the Business Registration
11 Ordinance before applying for the Permit.

12 (B) All operators and Owners of Animal-Drawn Vehicles shall be subject to
13 the following additional requirements:

14 (1) All Animals used to pull any wagon, cart, carriage or other vehicle
15 must weigh at least 800 pounds and be considered in good health. Any Owner
16 or operator of an Animal-Drawn Vehicle who desires to use a smaller Animal
17 shall apply to AACC for approval, in writing, prior to such use.

18 (2) Animals used to pull Animal-Drawn Vehicles exhibiting any of the
19 following shall be deemed unfit for work and shall be under the care of a
20 Veterinarian:

21 (a) Sores or abrasions caused, or likely to be irritated, by girth,
22 harnesses or bridles;

23 (b) Serious injury or illness; or

24 (c) Obvious signs of emaciation, malnutrition, lameness or exhaustion.

25 (3) Animals used to pull Animal-Drawn Vehicles requiring Veterinary care
26 shall not be moved, ridden or driven except for the purpose of pasturing or
27 obtaining medical care.

28 (4) Enclosures where Animals are kept shall be graded and raked so as to
29 keep the surface reasonably dry.

30 (5) Animals used to pull Animal-Drawn Vehicles shall be allocated at least
31 30 minutes of rest for every two hour work period. The maximum working
32 period for any one Animal shall be eight hours in every 24 hour period. No

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 Animal used to pull an Animal-Drawn Vehicle shall be overridden or driven in a
2 manner that might result in overheating or exhaustion.

3 (6) Animals used to pull Animal-Drawn Vehicles shall not be worked when
4 the temperature at street level at any loading site reaches or exceeds 95
5 degrees Fahrenheit.

6 (7) Animals used to pull Animal-Drawn Vehicles shall not be driven at a
7 speed exceeding a slow trot.

8 (8) Animals used to pull Animal-Drawn Vehicles shall be provided Potable
9 Water at every loading site and at least once an hour while they are working.

10 (9) All harnesses and other tack shall be kept oiled, cleaned and in good
11 repair.

12 (10) Wagons, carts, carriages or other vehicles must be kept properly
13 lubricated, and all wheels must spin freely.

14 (11) In addition to issuing any applicable citations, the Mayor's designee
15 may order a Quarantine of the entire premises where the Animals used to pull
16 Animal-Drawn Vehicles are being stabled or any part thereof for any of the
17 following conditions in one or more of the Animals:

18 (a) Excessive parasitism, diagnosed by a Veterinarian, which could
19 cause any Animal to be unfit to be ridden or driven; or

20 (b) General malnutrition as diagnosed by a Veterinarian; or

21 (c) Presence or suspicion of contagious or transmittable disease as
22 diagnosed by a Veterinarian.

23 (12) Owners and operators of Animal-Drawn Vehicles shall not permit
24 unsanitary conditions to be present on any route or in any Animal rest area or
25 area where animals are kept. All such areas shall be kept clean and free of
26 conditions which might attract insects, parasites or rodents."

27 SECTION 12. § 9-2-3-16 PERMIT FEES (A) is hereby amended as follows:

28 "(A) Sixty percent of all net Permit fees collected under the HEART

29 Ordinance and 60% of fees for microchipping, spaying and neutering

30 performed by the City, shall be dedicated exclusively to programs for the free

31 microchipping and the free spaying and neutering of Companion Animals for

32 Low Income Persons, Moderate Income Persons, Seniors and when possible,

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 the general public. All fees listed in this article are a minimum fee amount and
2 may be increased administratively by the Mayor’s designee.”

3 SECTION 13. § 9-2-4-4 (A) and (B) are hereby amended as follows:

4 “(A) *Public Property*. No Person shall display, sell, deliver, offer for sale,
5 barter, auction, give away, or otherwise dispose of an Animal upon a street,
6 sidewalk, public park, public right-of-way or other public property. Adoption
7 events approved by the Mayor’s designee, or any adoption events held by a
8 Rescue Group or Rescue individual are exempt.

9 (B) *Commercial Property*. No Person shall display, sell, deliver, offer for
10 sale, barter, auction, give away, or otherwise dispose of any Animal upon
11 commercial property including parking lots, with or without the property
12 owner’s permission. PSP Holders are limited to the property the Permit was
13 issued for. Adoption events approved by the Mayor’s designee are exempt.”

14 SECTION 14. § 9-2-4-5 is hereby amended as follows:

15 “§ 9-2-4-5 ANIMAL RACING.

16 It shall be unlawful for any person to hold, conduct, attend or operate live
17 Animal racing for public exhibition, pari-mutuel betting or special exhibition
18 events. The exception to this prohibition is horse racing and charitable events
19 with the approval of the Mayor’s designee.”

20 SECTION 15. § 9-2-4-8 (C) is hereby amended as follows:

21 “(C) No Person shall commit the offense of Cockfighting. When any
22 Person is charged with Cockfighting, the Mayor’s designee shall take the
23 Fighting Birds at the location into Protective Custody. A Person commits the
24 offense of Cockfighting if the person knowingly:

25 (1) owns, possesses, keeps, rears, breeds, trains, buys, sells, transports,
26 or advertises or otherwise offers to sell a Fighting Bird;

27 (2) promotes or participates in, or performs services in furtherance of, the
28 conducting of a Cockfight. Services in furtherance of a Cockfight include
29 transporting spectators to a Cockfight, handling Fighting Birds, organizing,
30 advertising or refereeing a Cockfight and providing, or acting as a stakeholder
31 for, money wagered on a Cockfight;

32 (3) keeps, uses or manages, or accepts payment of admission to, a place
33 for the conducting of a Cockfight;

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

- 1 (4) suffers or permits a place in the possession or control of the Person to
- 2 be occupied, kept or used for the conducting of a Cockfight;
- 3 (5) manufactures, buys, sells, barter, exchanges, possesses, advertises
- 4 or otherwise offers to sell a Gaff, Slasher or other sharp implement designed
- 5 for attachment to a Fighting Bird or any other bird; or
- 6 (6) attends a Cockfight or pays admission at any location to view or bet
- 7 on a Cockfight.”

8 SECTION 16. § 9-2-5-1 (B) is hereby amended as follows:

9 “(B) *Found Companion Animal.*

10 (1) Any Person who finds a Stray Companion Animal may possess and

11 temporarily care for such Companion Animal pursuant to the terms of this

12 article.

13 (2) The provisions of this article apply equally to both the Finder and the

14 Owner.

15 (3) The Finder may keep such Companion Animal at the Household of the

16 Finder and need not deliver the Animal to AACC so long as the requirements

17 of this section are met.

18 (4) These provisions do not apply if the Companion Animal is Owned or

19 claimed by any Person known to the Finder and is or may be the subject of a

20 dispute between the Finder and any other Person concerning ownership or

21 Custody of the Companion Animal.

22 (5) Within 24 hours of the time the Companion Animal is found, the Finder

23 must contact AACC and register as a Finder with AACC.

24 (6) No Person who does not qualify as a Qualified Adopter shall register

25 or be allowed to register hereunder and such Person must immediately

26 surrender the Found Animal to AACC upon demand of the Mayor’s designee.

27 (7) To register, the Finder shall provide a description of the Companion

28 Animal including, when applicable, any License, Microchip or other

29 identification on the Companion Animal, the time and date when the Animal

30 was found, and the location where the Animal was found.

31 (8) The Finder shall determine if the Companion Animal is Microchipped

32 by taking the Companion Animal to any Person who can scan and read a

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 Microchip, by calling AACC and requesting an ASO to come to the Household
2 to scan the Animal or by delivering the Animal to AACC so it can be scanned.

3 (9) If the Companion Animal is Microchipped, the Finder shall provide the
4 Microchip number to AACC.

5 (10) A registered Finder may exceed Companion Animal number limits
6 while in temporary possession of a Found Companion Animal.

7 (11) If the Companion Animal is not Microchipped or Altered, the Finder
8 does not have to Microchip or Alter said Animal while in temporary
9 possession but shall Microchip or Alter the Companion Animal when and if the
10 Finder becomes the Owner under this section.

11 (12) If the Finder wishes to own the Found Companion Animal, the Finder
12 shall so notify AACC and said Animal shall become the property of the Finder
13 10 days from the registration date if no Person Reclaims the Companion
14 Animal.

15 (13) Within the 10 days, if any Person purports to be the actual Owner of
16 the Companion Animal, such Person shall contact AACC and not the Finder.
17 The Mayor's designee may require Proof of Ownership. If the claimant is in
18 fact the Owner, the Mayor's designee shall order the registered Finder to
19 return the Companion Animal to AACC for Reclaim by the Owner and the
20 Finder shall comply."

21 SECTION 17. § 9-2-6-1 is hereby amended as follows:

22 "§ 9-2-6-1 RABIES.

23 (A) An Anti-Rabies Vaccination shall be administered as often as required
24 according to state law. The duty to provide an Anti-Rabies Vaccination does
25 not discharge the Owner from the duty to provide other Vaccinations and
26 reasonable medical treatment for Companion Animals.

27 (B) *Anti-Rabies Vaccination.* All Owners of Companion Animals or ferrets
28 over the age of three months shall have Companion Animals and ferrets
29 Vaccinated against rabies no less frequently than required under New Mexico
30 State law. The Anti-Rabies Vaccination shall be administered by a Veterinarian
31 who also shall issue an Anti-Rabies Vaccination certificate and tag. The
32 Mayor's designee may require Animals other than Companion Animals or
33 ferrets to receive annual Anti-Rabies Vaccinations. The Veterinarian

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 administering the Anti-Rabies Vaccine to an Animal shall issue the Owner an
2 Anti-Rabies Vaccination certificate and tag, each bearing the same number.
3 The Veterinarian shall legibly record, on the approved certificate, in the
4 appropriate areas the name and address of the Owner of the Animal, a
5 description of the Animal, the date of Vaccination and the expiration date of
6 the period of immunity, sterilization status, and Veterinary practice name. This
7 information shall be delivered by the Veterinarian to the Mayor's designee in
8 accordance with this article. The Owner of a Companion Animal or a ferret
9 shall produce its certificate of Anti-Rabies Vaccination upon demand by the
10 Mayor's designee.

11 (C) *Potentially Rabid Animals.* The Owner of an Animal having rabies or
12 showing signs of rabies, an Animal bitten by a rabid Animal or an Animal that
13 has been exposed to rabies shall immediately isolate the Animal in a Secure
14 Facility or within a Secure Fence where it cannot possibly come into contact
15 with any other Animals or humans other than the Owner. Any Person who has
16 knowledge of an Animal infected by or exposed to rabies shall immediately
17 notify the Mayor's designee of the location of the affected Animal. The Animal
18 shall be surrendered by its Owner to the Mayor's designee upon demand. The
19 Animal shall be dealt with in accordance with state law.

20 It is the duty of the Owner of an Animal that Bites a Person and of the Person
21 bitten by an Animal to report the Bite to the Mayor's designee within 24 hours
22 after the Bite occurs. If deemed necessary by the Mayor's designee, the Owner
23 shall surrender the Animal to the Mayor's designee for Impoundment,
24 Quarantine, observation or destruction and rabies testing at the Mayor's
25 designee's discretion. A physician who renders medical treatment to a Person
26 bitten by an Animal shall report the Bite to the Mayor's designee within 24
27 hours of such treatment. Such medical treatment shall be paid for by the
28 Owner of the Animal. The physician shall report the name, sex, and address of
29 the Person bitten, as well as the type and location of the Bite on the Person's
30 body. The physician shall give the name and address of the Owner of the
31 Animal to the Mayor's designee and, if known, any other facts that may assist
32 the Mayor's designee in locating the biting Animal and in ascertaining the
33 immunization status of the Animal.

[Bracketed/Underlined Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (D) *Quarantine.* An Animal that has bitten or is suspected of biting a Person
2 shall be confined securely at a location for a period of time deemed necessary
3 by the Mayor's designee. The Owner of the Animal shall be responsible for
4 and bear the cost of confinement. If the Owner does not confine the Animal as
5 required by the Mayor's designee, the Mayor's designee may Seize and
6 Impound the Animal and will keep it under Protective Custody at AACC for no
7 longer than 15 days and the Owner shall pay all related costs before
8 Reclaiming the Animal. After 15 days of Protective Custody under this
9 subsection, the Animal will become the property of the City and may be routed
10 or disposed of under the terms of this article. The Mayor's designee may
11 consent to confinement on the Owner's premises only if the Owner can prove
12 to the Mayor's designee's satisfaction that the Animal cannot escape. Before
13 the Owner's premises can be used for Animal confinement, the premises shall
14 be inspected and must be approved for such purpose by the Mayor's
15 designee. A Person who has custody of an Animal that has bitten a Person
16 shall immediately notify the Mayor's designee if the Animal shows any signs
17 of sickness, abnormal behavior or if the Animal escapes confinement. If the
18 Animal dies while in confinement, the Person having custody of the Animal
19 shall notify the Mayor's designee immediately and surrender the deceased
20 Animal to the Mayor's designee. Any Animal Quarantined for rabies will, on
21 completion of the Quarantine period, be Microchipped for positive and
22 Permanent Identification as a condition of Quarantine release or Reclaim. An
23 Animal being Quarantined by AACC will receive the Microchip prior to being
24 released. The Owners of any Animal Quarantined by the Owner will
25 immediately make arrangements for Microchipping their Quarantined Animal
26 with a Veterinarian of their choice or AACC, with the cost for such services
27 being borne by the Owner. Microchipping a Quarantined Animal must be
28 completed within 10 days of the Quarantine and failure to do so is a violation
29 of this article.

30 (E) *Veterinarians.*

31 (1) Each Veterinarian that Vaccinates shall deliver to the city information
32 regarding all Anti-Rabies Vaccinations administered during the preceding

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 month by the fifteenth day of the following month by either hard copy or in an
2 electronic format approved by the City.

3 (2) Approved Veterinarians shall receive a credit of fifty cents for each
4 Vaccination certificate submitted as a hard copy and one dollar for each
5 submitted electronically. The credits will only be granted if the information is
6 received by the fifteenth day of the month immediately following the month in
7 which the Vaccination certificate was issued and if the information is complete
8 and accurate as determined by the Mayor's designee.

9 (3) Veterinarians shall post and maintain a sign clearly visible to the
10 public stating that dogs and cats must be spayed, neutered or permitted in
11 accordance with the ordinance including the proper citation and have anti-
12 rabies vaccinations as mandated by the State of New Mexico and the City of
13 Albuquerque. AACC will provide one sign free to each Veterinarian."

14 SECTION 18. § 9-2-7-1 is hereby amended as follows:

15 "§ 9-2-7-1 INSPECTIONS AND HEARING PROCESS.

16 (A) Permitted matters must be regulated by the city to protect Animals and
17 the public. A Permit gives a Person the privilege to possess Animals and
18 engage in activities in exchange for an agreement by the Permit Holder to care
19 for Animals pursuant to the standards in this article and protect the public. A
20 Permit is not a property right and can be revoked, suspended, conditioned or
21 limited by the City. The City may declare moratoria regarding the issuance of
22 Permits or temporarily limit or condition Permits from time to time. Any
23 Person who does not have a Permit and is engaged in any activity that
24 requires a Permit under this article is guilty of a petty misdemeanor under § 1-
25 1-99 ROA 1994. Each day of activity without a Permit is a separate petty
26 misdemeanor offense. The absence of a Permit and engagement in activity
27 prohibited hereunder is prima facie evidence of a petty misdemeanor. Permits
28 automatically expire one year from the date granted unless otherwise
29 specifically provided in this article. Permits are not transferable. The Mayor's
30 designee may promulgate regulations consistent with this article. The
31 following provisions apply to revocation, suspension or limitation and other
32 administrative enforcement actions concerning Permits.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

- 1 **(B) *Violations and Inspections.*** If the Mayor’s designee discovers a
2 violation of this article by a Permit Holder or any citizen complains about the
3 activities allowed under a Permit and the Mayor’s designee finds that such
4 complaint is valid, the Mayor’s designee shall give notice of the violations by
5 means of an inspection report or other written notice. The notification shall:
- 6 (1) Set forth each specific violation;
- 7 (2) Establish a specific and reasonable period of time for the correction of
8 the violation;
- 9 (3) State that failure to comply with a notice issued in accordance with the
10 provisions of this article may result in a civil fine being assessed or immediate
11 suspension or revocation of the Permit;
- 12 (4) State that an opportunity for appeal from a notice or inspection
13 findings will be provided if a written request for a hearing is filed with the
14 Office of the City Clerk within 15 days of receipt of the notice in accordance
15 with the procedures outlined in the Independent Office of Hearings Ordinance,
16 ROA 1994, Sections 2-7-8-1 to 2-7-8-9; and
- 17 (5) Where a civil fine has been assessed: state the amount of the fine
18 assessed; state that the fine must be paid in full within 30 days of the date of
19 the notice; and contain instructions for how the fine can be paid.
- 20 **(C) *Notice.*** Notices under this section shall be deemed properly served and
21 received when the original inspection report or other notice has been
22 personally served on the Person in Charge or sent by registered or certified
23 mail to the last known address of the Permit Holder.
- 24 **(D) *Suspension.*** Permits may be suspended for failure of the Holder to
25 comply with the requirements of this article or other applicable laws,
26 ordinances or regulations. The suspension may be lifted when the Mayor’s
27 designee determines the violations have been corrected.
- 28 **(E) *Revocation.*** Permits may be revoked for serious or repeated violations
29 of the requirements of this article, or for violation of other applicable laws,
30 ordinances or regulations. A Permit revocation is permanent and a second
31 Permit of any kind will not be granted to the previous Holder or any Person in
32 privity with the previous Holder. The Permit shall be surrendered to the
33 Mayor’s designee upon suspension or revocation.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (F) *Civil Fine.* The Mayor's designee may impose a civil fine of \$200 for a
2 first violation of this article, \$300 for a second violation of this article and \$500
3 for a third or subsequent violation of this article. Notice of the civil fine shall
4 be appealable under the administrative appeal procedures of this article.
5 Failure to pay the fine, appeal the fine, or prevail at an administrative hearing
6 challenging the fine shall allow the Mayor's designee to place a lien upon any
7 asset owned by the Permit Holder. The Mayor's designee may also collect on
8 the fine through any other method allowed by law.

9 (G) *Reinspection.* A Person whose Permit has been suspended may apply
10 for an inspection of the premises for the purpose of reinstating the Permit by
11 filing an additional application for a Permit at AACC on the form provided by
12 the Mayor's designee. Within five working days after AACC receives the
13 application, the Mayor's designee shall make an inspection. If the applicant
14 and the site are in compliance with the requirements of this article and all
15 other applicable laws, regulations, and ordinances, the Permit shall be
16 reinstated. The reinstated Permit shall expire on the date of expiration of the
17 previously suspended permit.

18 (H) *Revocation of Exotic or Wild Animal Permit.* If an Exotic or Wild Animal
19 Permit is suspended or revoked, all Animals received, purchased, owned or
20 kept under the authority of the Permit shall be surrendered to the Mayor's
21 designee for impoundment as provided in the Impoundment section of this
22 article. After a period of at least seven days, if the violations of the article
23 which resulted in suspension or revocation of the Permit have not been
24 corrected, the Mayor's designee may sell or dispose of the Animal(s) in a
25 humane manner.

26 (I) *Appeal.* A Person who has been assessed a civil fine or whose
27 application for a Permit or Permit renewal has been approved on condition or
28 denied, and a Permit Holder whose Permit has been suspended or revoked,
29 may submit to the City Clerk a written request for a hearing, provided that the
30 written request is received by the City Clerk within 15 days of the applicant's
31 receipt of the written notice of denial, conditional approval or civil fine. The
32 hearing shall be conducted in accordance with the provisions in the IHO
33 Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (J) *Preclusion and Default.* The Administrative Hearing Officer may render a
2 decision without proceeding with the hearing if the Administrative Hearing
3 Officer determines that the issue has been previously decided in another
4 proceeding which provided due process. If the applicant or the Mayor's
5 designee fails to appear at a scheduled hearing, the Hearing Officer may
6 postpone the hearing for a period of no more than five business days or may
7 determine that the absent party has waived his right to a hearing. Both parties
8 shall be notified of such determination.

9 (K) *Recording.* The hearing shall be recorded by audio method, but need
10 not be transcribed unless a written transcript is requested, in which case the
11 cost of transcription shall be borne by the party requesting transcription. If
12 one party prefers to have the hearing transcribed by a court reporter, that
13 party shall pay all directly related costs, and the party requesting transcription
14 shall pay the cost of transcription.

15 (L) *Decision.* The Hearing Officer shall prepare a written report of his
16 findings and decision within ten days after the hearing and shall provide
17 copies to the parties. Following a hearing, the respondent may appeal the
18 decision of the Hearing Officer to the District Court within 30 days of the
19 decision.

20 (M) *Fee.* A nonrefundable hearing fee of \$50 shall accompany the appeal to
21 the City Clerk filed pursuant to this section.

22 SECTION 19. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
23 clause, word or phrase of this Ordinance is for any reason held to be invalid or
24 unenforceable by any court of competent jurisdiction, such decision shall not
25 affect the validity of the remaining provisions of this Ordinance. The Council
26 hereby declares that it would have passed this Ordinance and each section,
27 paragraph, sentence, clause, word or phrase thereof irrespective of any
28 provision being declared unconstitutional or otherwise invalid.

29 SECTION 20. COMPILATION. Sections 1 through 18 of this Ordinance shall
30 amend, be incorporated in, and made part of the Revised Ordinances of
31 Albuquerque, New Mexico, 1994.

32 SECTION 21. EFFECTIVE DATE. This Ordinance shall take effect five (5)
33 days after publication by title and general summary.

1 PASSED AND ADOPTED THIS 1st DAY OF May, 2023
2 BY A VOTE OF: 9 FOR 0 AGAINST.

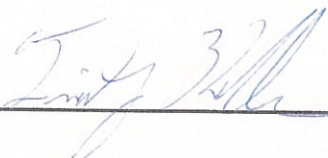
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33



Pat Davis, President
City Council

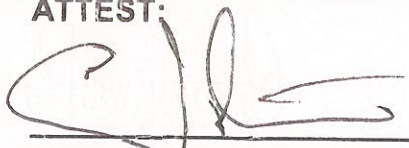
APPROVED THIS 18 DAY OF May, 2023

Bill No. O-23-75



Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:



Ethan Watson, City Clerk

[+Bracketed/Underscored Material+] - New
[-Bracketed/Strikethrough Material-] - Deletion