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1 **CLOSE, TO CLOSE, or CLOSURE.** To ~~[seize the property and]~~remove all
2 owners, tenants, occupants and other persons and animals from the real
3 property, vehicle, or personal property, or a specified discrete portion thereof,
4 and to lock, board, bar, or otherwise close and prohibit all entry, access, and
5 use of the real property, vehicle, or other personal property, or a specified
6 discrete portion thereof, except such access and use as may be specifically
7 ordered by the court for purposes of inventory, maintenance, storage, security,
8 and other purposes~~[, and to vest the sole right of possession and control of the~~
9 ~~real property, vehicle, or personal property, or a specified discrete portion~~
10 ~~thereof, in the City of Albuquerque for a limited period of time defined by court~~
11 ~~order. In the case of a vehicle, closure includes impoundment].~~

12 **CONTRABAND.** Any personal property which is illegal to own.
13 [**CRIME PREVENTION STANDARDS.** Standards promulgated by the Mayor's
14 designee for the design, management and operation of a property or business
15 that aim to prevent criminal activity.]

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

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

25 **LEGAL OR EQUITABLE INTEREST OR RIGHT OF POSSESSION.** Every legal
26 or equitable interest, title, estate, tenancy, or right of possession recognized by
27 law and equity, including ~~[but not limited to]~~freeholds, life estates, future
28 interests, condominium rights, time-share rights, leaseholds, easements,
29 licenses, liens, deeds of trust, contractual rights, mortgages, security interests,
30 and any right or obligation to manage or act as agent or trustee for any person
31 holding any of the foregoing.

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

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

3 **PERSON.** Natural persons and every legal entity whatsoever, including ~~[but~~
4 ~~not limited to]~~sole proprietors, corporations, limited liability companies,
5 partnerships, limited partnerships, and associations.

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

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

11 **PUBLIC NUISANCE.**

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

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

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

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- 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, § 14-3-1-
- 11 1 to § 14-3-5-99 ROA 1994; or
- 12 ~~[(77) Violations of the City of Albuquerque Housing Code defining~~
- 13 ~~nuisance, § ROA 1994; or~~
- 14 ~~(78) Violations of City of Albuquerque Housing Code defining substandard~~
- 15 ~~building, § ROA 1994; or]~~
- 16 (7[7][9]) Violations of the City of Albuquerque Fire Codes, § 14-2-1 ROA
- 17 1994; or
- 18 ([7]8[0]) Violations of the City of Albuquerque's Abandoned or Inoperable
- 19 Vehicle Ordinance, § 8-5-2-0 to § 8-5-2-99 ROA 1994; or
- 20 [(79) Violations of the City of Albuquerque's Humane and Ethical Animal
- 21 Rules and Treatment (HEART) Ordinance, § 9-2-2-2 ROA 1994, *Housing and*
- 22 *Restraint Standards for Mammals and Birds Kept on Residential Property; or*
- 23 (80) Violations of the City of Albuquerque's Humane and Ethical Animal
- 24 Rules and Treatment (HEART) Ordinance, § 9-2-4-7 ROA 1994, *Animal Noise; or*
- 25 (81) Violations of the City of Albuquerque's Humane and Ethical Animal
- 26 Rules and Treatment (HEART) Ordinance, § 9-2-4-8 ROA 1994, *Animal Fights; or*
- 27 (82) Violations of the City of Albuquerque's Joint Air Quality Control Board
- 28 Ordinance, § 9-5-1-1 to § 9-5-6-3 ROA 1994; or
- 29 (83) Violations of the City of Albuquerque's Food Sanitation Ordinance, § 9-
- 30 6-1-1 to § 9-6-1-99 ROA 1994; or
- 31 (84) Violations of the City of Albuquerque's Albuquerque Insect and Rodent
- 32 Control Ordinance, § 9-7-1 to § 9-7-99 ROA 1994; or]

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- 1 (8[4][5]) Violations of the City of Albuquerque’s Weed and Litter Ordinance,
- 2 § 9-8-1 to § 9-8-99 ROA 1994; or
- 3 [(86) Violations of the City of Albuquerque’s Noise Control Ordinance, § 9-
- 4 9-1 to § 9-9-12 ROA 1994; or
- 5 (87) Violations of the City of Albuquerque’s Pollen Control Ordinance, § 9-
- 6 12-1 to § 9-12-99 ROA 1994; or
- 7 (88) Violations of the City of Albuquerque’s Pigeon Nuisance Abatement
- 8 Ordinance, § 9-18-1 to § 9-18-7 ROA 1994; or
- 9 (89) Violations of the City of Albuquerque’s Integrated Development
- 10 Ordinance, § 14-16-4-2 ROA 1994; or]
- 11 ~~[(82)[90])~~ Driving under the influence of intoxicating liquor or drugs, 66-8-
- 12 102 NMSA.

13 (B) A public nuisance shall include and is further defined as any parcel of
14 real property, commercial or residential, that is the subject of or that has been
15 involved with calls for service to any law enforcement agency(ies) for violations
16 of the criminal statutes cited in § 11-1-1-3(A) defining public nuisance and shall
17 include a repeated pattern of calls for service and complaints of vagrants,
18 suspicious persons, suspicious cars, general calls for welfare checks,
19 disorderly conduct, domestic violence, domestic altercations, domestic
20 disputes, loud parties, loud music, neighborhood complaints, noise ordinance
21 violations, and public drunkenness and shall be subjected to the imposition of
22 penalties for public nuisance as provided by § 11-1-1-11 ROA 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, and
29 all estates rights and interests, legal and equitable, in the same, including[, but
30 not limited to,] all forms of ownership and title, future interests, condominium
31 rights, time-share rights, easements, water rights, mineral rights, oil and gas
32 rights, space rights, and air rights.

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1 **RECEIVERSHIP.** The special receivership on the terms set out in §[11-1-1-25]
2 [13(B)(4)] below.

3 **RELOCATION AGENCY.** Those employees of the Department of Family and
4 Community Services responsible for implementing the provisions of Ordinance
5 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 greater
10 amount. If special circumstances are demonstrated, relocation costs may
11 include the actual cost of physically moving to a residential building approved
12 by the relocation agency (the "replacement unit"); costs of moving to a location
13 outside of the immediate area; any security/damage deposit required by the
14 replacement unit owner which exceed the amount of the security/ damage
15 deposit recovered from the owner of the building the resident is moving from;
16 utility deposits and hook up cost and the rent for the first month; costs of
17 moving back to the residential building originally vacated after housing code
18 compliance; and any other reasonable relocation costs.

19 **RENTAL AGREEMENT.** Any written or oral agreement allowing occupancy of
20 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 seizure,
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.

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1 **TENANT.** Any person who uses, resides in, or occupies property identified as
2 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 may
5 be transported or drawn upon a highway, including any frame, chassis or body
6 of any vehicle or motor vehicle, except devices moved exclusively by human
7 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 any
14 real property, vehicle, or other personal property to intentionally, knowingly,
15 recklessly, or negligently commit, conduct, promote, facilitate, permit, fail to
16 prevent, or otherwise let happen, any public nuisance in, on or using any
17 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 a
20 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;

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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 ~~[including but not limited to]~~ providing on-site security or
7 otherwise tak[e][ing] action that will abate, terminate or eliminate the public
8 nuisance activity on the property in exchange for the City of Albuquerque
9 reserving its rights and agreeing not to initiate any legal action for public
10 nuisance against the property owner during the term of the agreement provided
11 that the property owner complies with the terms and conditions of the written
12 Nuisance Abatement Agreement and the public nuisance is eliminated, abated
13 or terminated.

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

17 § 11-1-1-11 PENALTIES FOR PUBLIC NUISANCE VIOLATIONS.

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

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

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

29 (1) The defendant must evict, remove, and permanently bar from entering
30 the property any persons who committed the criminal activity forming the basis
31 of the public nuisance, including ~~[but not limited to]~~ the defendant himself, his
32 or her family members and relatives, and owners, tenants, occupants, guests,
33 and other persons. This may be accomplished through forcible entry and

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1 detainer actions, sale of the property, new leases of the property, or other legal
2 action 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 public
5 nuisances from recurring on the property[~~;. Such steps may include~~~~[including~~
6 ~~but not limited to]~~ landlord training, tenant background checks and screening,
7 ~~[making]~~ improvements to the property, including general repairs which will
8 bring the property into compliance with~~[the City Uniform]~~ Housing Code, § 14-
9 3-1 et seq., ROA 1994~~[,];~~ Integrated Development Ordinance, § 14-16-1-1, et
10 seq., ROA 1994, ~~[and]~~ including fencing, lighting, and destruction of buildings,
11 modifications to leases, security guards, removal of trash, junk, and graffiti, and
12 compliance 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 public
18 nuisance. The city may also post such notices in prominent places on the real
19 property on which the public nuisance occurred. These notices may be
20 attached to any structure on the real property. The city shall have the right to
21 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 ~~notices and releases may contain the property address, the names of the~~
27 ~~defendants convicted and all persons holding any legal or equitable interest in~~
28 ~~the property, photographs of the defendants and all persons holding any legal~~
29 ~~or equitable interest in the property, photographs of the property and the~~
30 ~~nuisance activity, a narrative description of the nuisance activity involved, a~~
31 ~~statement that the property constitutes a public nuisance, the court's sentence~~
32 ~~including any suspended sentence, and the conditions of the same, and may~~
33 ~~invite the public to contact the city regarding any further nuisance activity or~~

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1 ~~violations of the sentence.~~]The city may post the property and release or
2 publish the notices provided above for a period not exceeding one year from
3 the conviction, or, in the event that the conviction is appealed, one year from
4 the date the conviction is affirmed. It shall be unlawful for any person to
5 interfere with, remove, obliterate, obscure, cover, or destroy any notice posted
6 pursuant to the provisions of this section.

7 (E) *Additional and alternative remedies.* In addition or in the alternative to
8 the criminal fines, sentences, conditions of suspended sentences, publication,
9 posting, press and media releases, and other sanctions provided above, the city
10 may also seek administrative remedies against any [applicable] license and the
11 civil remedies provided in this ordinance. These remedies shall be cumulative,
12 and the city may pursue one or more of them, simultaneously or in succession.

13 [§ 11-1-1-12 Administration.
14 The Mayor’s designee shall be responsible for the administration of this article.
15 Reasonable rules and regulations may be promulgated by the Mayor’s designee
16 to carry out the intent and purpose of this article.]

17 **SUBPART C:**
18 **CIVIL ABATEMENT OF PUBLIC NUISANCE OFFENSES: IN REM**
19 **PROCEEDINGS**

20 **§ 11-1-1-20 INTENT.**

21 (A) The abatement of public nuisances for the protection of public health,
22 safety, and welfare is a matter of local concern. The purpose of this subpart
23 is not to punish, but to abate public nuisances. The actions provided in this
24 subpart are designed to abate public nuisances by removing the property ~~[and~~
25 ~~vehicles]~~from criminal use and as a base of criminal operations, ~~[to ensure that~~
26 ~~criminal activity and the use of the property for criminal purposes is~~
27 ~~unprofitable, to require that the profits of criminal activity be disgorged,]~~ to
28 make property owners vigilant in preventing public nuisances on, in, or using
29 their property and responsible for the lawful use of their property by tenants,
30 guests and occupants, and to deter public nuisances. The remedies provided
31 in this subpart are directed at the property involved without regard to
32 ownership, title or right of possession and the culpability or innocence of those
33 who hold these rights. The remedial actions provided in this subpart are

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1 intended to be civil in nature. The remedies of ~~[seizure,]~~ temporary restraining
2 order, closure, receivership, sale, and/or destruction are intended to be in rem,
3 against the property itself, and not against any individual directly. However, the
4 remedies of temporary restraining order, civil judgment, and permanent
5 injunction may be partially in personam.

6 (B) In order to ensure that the remedies provided in this ordinance are
7 applied in good faith and for the purposes of public nuisance abatement, ~~[the~~
8 ~~following shall apply:~~

9 ~~—(1) N][n]o city employee’s or law enforcement officer’s employment or level~~
10 ~~of salary shall depend upon the frequency or quantity of actions and remedies~~
11 ~~under this ordinance that he or she produces.~~

12 ~~[(—(2) All seizures of real property shall be made pursuant to a temporary~~
13 ~~restraining order based upon a judicial finding of probable cause and only after~~
14 ~~an opportunity for an adversarial hearing to contest the seizure has been~~
15 ~~provided.]~~

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

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

22 § 11-1-1-21 PROCEDURE IN GENERAL.

23 (A) The remedies provided in Subpart C of this ordinance are cumulative and
24 supplementary to the criminal penalties provided in Subpart B of this ordinance,
25 the criminal remedies provided by any other criminal ordinance or statute, other
26 civil remedies, and any administrative proceedings to revoke, suspend, fine, or
27 take other action against any license. The city may pursue the remedies
28 provided in Subpart C of this ordinance, the criminal penalties provided in
29 Subpart B of this ordinance or other ordinances or statutes, other civil actions
30 or remedies, administrative proceedings against a license, or any one or more
31 of them, and may do so simultaneously or in succession.

32 (B) In the event that the city pursues both the criminal penalties in Subpart
33 B, the criminal remedies provided in any other section, other civil remedies, or

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1 the remedies of any administrative action and the remedies in Subpart C, the
2 civil actions provided in Subpart C shall not be delayed or held in abeyance
3 pending the outcome of any proceedings in the criminal, civil or administrative
4 action, or any action filed by any other person, unless all parties to the action
5 under Subpart C so stipulate.

6 (C) All actions under Subpart C are civil and remedial in nature. All [seizure,
7]closure, receivership, sale and destruction remedies under Subpart C shall be
8 in rem. Injunctive remedies under this section may be partly in personam.

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

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

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

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

22 (H) The defendants to an action under Subpart C of this ordinance and the
23 persons liable for the remedies in this section may include the property itself,
24 any persons owning or claiming any legal or equitable interest or right of
25 possession in the property, all tenants and occupants at the property, managers
26 and agents for any persons owning or claiming a legal or equitable interest in
27 the property, any persons committing, conducting, promoting, facilitating or
28 aiding the commission of or flight from a public nuisance, and any other
29 persons whose involvement may be necessary to abate the nuisance, prevent
30 it from recurring, or to carry into effect the court's orders for temporary
31 restraining orders, [seizures,-]closures, receiverships, permanent injunctions,
32 liens, sales and destruction. Any person holding any legal or equitable interest

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1 or right of possession in the property who has not been named as a defendant
2 may intervene as a defendant.

3 (I) Notification before filing civil action[or imposing civil fine].

4 (1) At least ten (10) calendar days before filing a civil action under this
5 ordinance involving any [~~seizure,~~]closure, or receivership of real property[or
6 imposing a civil fine], the Mayor's designee shall post a notice at the main
7 entrances to the buildings or at some other prominent place on the real
8 property. The Mayor's designee shall also mail a notice by certified mail, return
9 receipt requested, to the owner(s) of the real property and to the holder(s) of the
10 last deed of trust recorded on the real property. The mailing of the notice shall
11 be deemed sufficient if mailed to the owner(s) and the holder(s) of the last
12 recorded deed of trust at the address(es) shown on the records of the Bernalillo
13 County Clerk and/or the Bernalillo County Assessor's Office. The posted and
14 mailed notices shall state that the real property has been identified as a public
15 nuisance and that a civil action under this ordinance may be filed[and a civil
16 fine may be imposed].

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

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

- 23 (a) The public nuisance poses a threat to public safety; or
- 24 (b) Notice could jeopardize a pending investigation of criminal or public
25 nuisance activity, confidential informants, or other police activity; or
- 26 (c) Notice could result in sale, transfer, encumbrancing or destruction of
27 the property; or
- 28 (d) Other emergency circumstances exist; or
- 29 (e) The owner(s) and the holder(s) of the last recorded deed of trust have
30 been notified in writing within the last 120 days that the property has been
31 identified as a public nuisance and that a civil action under this ordinance may
32 be filed.

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

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

5 (1) The owner of a residential building (the "owner") shall pay relocation
6 costs for the residents who reside at such residential building when the ten-day
7 notice required in § 11-1-1-21(I) ROA 1994 is issued, subject to the provisions
8 of division (J)(6) of this section. This requirement shall be applicable when any
9 condition which is the basis for the order to vacate is within the control of the
10 owner and the owner or his agent knew or should have known of the existence
11 of the conditions that violate applicable codes, statutes, ordinances or
12 regulations prior to the order to vacate. Notice of such conditions by a
13 governmental agency responsible for the enforcement of a building, residential
14 unit, housing or other appropriate code served on the owner or the owner's
15 agent shall be proof that the owner knew of the conditions. Payment of
16 relocation costs shall be made by the owner to the agency designated by the
17 Mayor['s designee] to administer relocation (the "relocation agency") within 30
18 days after the owner's receipt of the relocation cost assessment issued by the
19 relocation agency. Interest shall accrue on any amount unpaid by the owner
20 commencing 30 days after the date the relocation agency first advances
21 relocation assistance funds to the displaced resident. Interest accrual shall not
22 be stayed during an appeal by the owner, but an owner who is successful on
23 appeal shall not be liable for interest. Owners who, on appeal, are found to not
24 owe relocation costs shall have payments they have made to the relocation
25 agency refunded to them without interest except for any interest actually paid
26 by the owner.

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

32 (3) At the time that a notice is served on the owner of the property, a notice
33 in substantially the following form shall be served on those residents known by

1 name to the Mayor['s designee]. Such notice shall be served by personal service
2 or by mailing a copy of such notice by certified mail, postage prepaid, return
3 receipt requested. As to residents unknown by name to the Mayor['s designee],
4 service may be accomplished by posting such notice at the main entrances or
5 at some other prominent place on or within the residential building. The notice
6 shall be written in both English and Spanish. The notice shall be provided to the
7 relocation agency on or before the day the notice to the residents is served or
8 posted.

9 **NOTICE TO RESIDENTS**

10 **YOU MAY BE REQUIRED TO MOVE**

11 **IF YOU MUST MOVE[,] YOU MAY BE ENTITLED TO MONEY**

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

15 The Court may order the building to be closed.

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

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

21 Phone Number:

22 Address:

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

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

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

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

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

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

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

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

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

13 (h) For an owner occupant of a mobile home who is renting a lot or parcel
14 for use as a site for the location of the mobile home, whether the requirement
15 to vacate was caused by actions outside the control of the resident.

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

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

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

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

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

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

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

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

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

7 (7) The Mayor's [~~office~~][designee] shall, by regulation, establish a
8 procedure for notice and an impartial evidentiary hearing prior to any
9 determination that an owner must repay relocation costs. The owner shall be
10 entitled to appeal the assessment of relocation costs by the relocation agency
11 pursuant to the appeal provisions of this code. Such appeal shall be filed within
12 30 calendar days of the owner's receipt of the relocation cost assessment from
13 the relocation agency. The filing of an appeal shall not stay the relocation
14 process.

15 (8) The Mayor['s designee] may promulgate regulations governing the
16 administration of this section, including [~~but not limited to~~]eligibility for
17 relocation costs, the amount and method of payment of relocation costs, the
18 criteria replacement units must meet.

19 (9) No action taken pursuant to this division shall affect the rights of
20 residents and owners in any civil litigation. Nothing [~~is~~][in] this division shall
21 be construed to change the obligations and rights of owners and residents as
22 required in the Uniform Owner-Resident Relations Act, Section 47-8-1 et seq.
23 NMSA 1978.

24 [~~(10) There is created in the City Treasury the "Relocation Assistance~~
25 ~~Fund" that shall be used solely for the purpose of relocation cost payments,~~
26 ~~costs of administration and enforcement costs related to relocation costs. All~~
27 ~~relocation payments received by the relocation agency shall be deposited in the~~
28 ~~Relocation Assistance Fund. Remaining balances at the end of the fiscal year~~
29 ~~shall remain in the Relocation Assistance Fund and shall not revert to the~~
30 ~~general fund.]~~

31 (1[0][4]) The relocation agency shall provide assistance in finding
32 alternative housing for residents who are displaced and qualify for relocation
33 assistance under Ordinance 21-2007.

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1 (1[1][2]) From the time that the city first notifies an owner of conditions that
2 violate applicable codes, statutes, ordinances or regulations to the time that the
3 relocation assistance payments are paid to eligible residents or the time the
4 conditions cited are corrected, the owner shall not evict, harass or intimidate
5 any resident for the purpose of avoiding or diminishing application of this
6 division. Included in this prohibition is the reduction of services to a resident
7 or materially increasing or changing the obligations of any resident, including
8 ~~[but not limited to]~~rent increases, for purposes of attempting to have the
9 resident vacate the residential building.

10 (1[2][3]) The city shall be entitled to attorneys' fees and costs arising from
11 any legal action to collect relocation costs assessed to owners.

12 ~~§ 11-1-1-22 SEIZURE OF CERTAIN VEHICLES AND OTHER PERSONAL~~
13 ~~PROPERTY BEFORE FILING COMPLAINT.~~

14 ~~—(A) Seizure of vehicles and other personal property on an ex parte basis and~~
15 ~~before filing may be necessary to prevent the removal, destruction or~~
16 ~~concealment of vehicles and other personal property to thwart the remedies~~
17 ~~provided in this ordinance.~~

18 ~~—(B) If the Mayor's designee or any police officer determines that there is~~
19 ~~probable cause to believe that:~~

20 ~~—(1) A public nuisance as defined in Subpart A of this ordinance has~~
21 ~~occurred; and~~

22 ~~—(2) The public nuisance occurred in a vehicle, or a vehicle or other personal~~
23 ~~property was used to commit, conduct, promote, facilitate or aid the~~
24 ~~commission of or flight from the public nuisance; and~~

25 ~~—(3) The vehicle or other personal property is capable of being concealed,~~
26 ~~destroyed, or removed from the City of Albuquerque and the County of~~
27 ~~Bernalillo; then the Mayor's designee or any police officer may seize and~~
28 ~~impound the vehicle or other personal property as a public nuisance.~~

29 ~~—(C) In any case in which a vehicle or other personal property is seized as~~
30 ~~provided in Subsection (A) above, the police officer or Mayor's designee shall~~
31 ~~report the seizure to the City Attorney within five (5) days of said seizure. Within~~
32 ~~30 days of the date the seizure is reported to the City Attorney, the City Attorney~~
33 ~~shall either declare the vehicle or other personal property available for release,~~

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1 ~~declare the vehicle or other personal property to be contraband, declare the~~
2 ~~vehicle or other personal property to be relevant evidence in a criminal~~
3 ~~proceeding, or file an action under this ordinance seeking closure of the vehicle~~
4 ~~or other personal property. The declarations provided above shall be in writing~~
5 ~~and shall be made available as public record at the office of the Mayor's~~
6 ~~designee.~~

7 ~~—(D) Any person claiming any legal or equitable interest or right of possession~~
8 ~~in any vehicle or other personal property seized under this Section may file a~~
9 ~~motion in the civil action filed under this Subpart C for return of the seized~~
10 ~~property. The motion shall be filed, set, served, heard and determined as~~
11 ~~provided in the New Mexico Rules of Civil Procedure.]~~

12 § 11-1-1-2[3][2] TEMPORARY RESTRAINING ORDERS IN GENERAL.

13 (A) *Intent.* Public nuisances are a real, direct and immediate threat to the
14 health, safety, and welfare of the people of Albuquerque. Public nuisances
15 cause immediate and irreparable injury, damages and losses to the citizens of
16 Albuquerque and their governmental agencies. Actions at law are not always
17 an adequate remedy, and the protection of public health, safety, and welfare
18 may require the temporary restraining orders provided in this section. Ex parte
19 temporary restraining orders are necessary to provide rapid relief from public
20 nuisances without the delay entailed by an adversarial hearing and personal
21 service and to prevent persons from [removing, concealing, destroying,
22]encumbering, selling or transferring property that may be the subject of the
23 remedies in this ordinance. The issuance and execution of temporary
24 restraining orders under Subpart C of this ordinance shall not be deemed a
25 bailment of property. The owner(s) of the property remains responsible for the
26 maintenance and security of property subject to temporary restraining orders
27 and shall be permitted reasonable access to the property for these purposes
28 upon application to the court.

29 (B) *Form of proposed temporary restraining order.* Every temporary
30 restraining order proposed by the city under Subpart C of this ordinance shall
31 set forth the reason for its issuance, be reasonably specific in its terms, and
32 describe in reasonable detail the acts and conditions authorized, required or

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1 prohibited, and shall be in accordance with the New Mexico Rules of Civil
2 Procedure.

3 § 11-1-1-2[4][3] TEMPORARY RESTRAINING ORDERS; PUBLIC NUISANCES.

4 (A) [~~Seizure of vehicles and other personal property not within buildings, and~~
5 ~~r~~][R]estraining orders to persons concerning real property, vehicles, other
6 personal property and public nuisances. The city [shall][may] petition the court
7 to issue a temporary restraining order that makes the following orders for
8 [~~seizure of vehicles and other personal property not contained within buildings~~
9 ~~and~~]restraining persons as to real property, vehicles, other personal property,
10 and public nuisances, which orders shall be served and become effective
11 pursuant to the New Mexico Rules of Civil Procedure:

12 ~~[(1) The Mayor's designee or any police officer to seize and close vehicles~~
13 ~~and other personal property not contained within any building on real property,~~
14 ~~using any reasonable force necessary, and to place the same in police custody,~~
15 ~~or to retain the same in police custody if previously seized, in the constructive~~
16 ~~custody of the court, until further order of the court. All towing and storage~~
17 ~~costs shall be paid by the owner(s) of the vehicle or other personal property.~~

18 ~~— (2) Persons to deposit with the Mayor's designee or any police officer~~
19 ~~documents evidencing title, registration and keys, combination numbers,~~
20 ~~magnetic cards and other devices for accessing the vehicles and other personal~~
21 ~~property.]~~

22 ([3][1]) The Mayor's designee or any police officer or sheriff's deputy to
23 post the summons, complaint, and temporary restraining order on the real
24 property and to serve copies upon any person who reasonably appears or
25 claims to hold any legal or equitable interest or right of possession in the
26 property.

27 ([4][2]) To restrain all persons from removing, concealing, damaging,
28 destroying, or selling, giving away, encumbering or transferring any interest in
29 vehicles, other personal property, fixtures, structures, or real property, or the
30 contents of the same, or using any of the property as security for a bond.

31 ([5][3]) [To require] [P][p]ersons holding any legal or equitable interest or
32 right of possession in the real property, vehicle, or other personal property to
33 take steps to abate the public nuisance and prevent it from recurring.

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1 ~~[[6][4]]~~ The Mayor's designee or any police officer to take reasonable steps
2 to abate the nuisance activity and prevent it from recurring.

3 ~~[[7][5]]~~ To require certain named individuals to stay at least 200 yards away
4 from the property at all times.

5 ~~[[8][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 the
7 property.

8 (B) ~~[[Seizure][Closure]of real property[and vehicles and other personal~~
9 ~~property within buildings].~~ In addition to the orders above, the city ~~[shall][may]~~
10 petition the court to include in the temporary restraining order the following
11 orders with respect to the ~~[seizure][closure]~~ of real property and the contents
12 of buildings, which orders shall be served and become effective pursuant to the
13 New Mexico Rules of Civil Procedure:

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

17 ~~[[2] Persons holding any legal or equitable interest or right of possession~~
18 ~~in the real property or personal property to deposit with the Mayor's designee~~
19 ~~or any police officer documents evidencing title, registration and keys,~~
20 ~~combination numbers, magnetic cards and other devices and information for~~
21 ~~accessing the real property and any buildings, structures, vehicles and other~~
22 ~~personal property contained thereon until further order of the court.]~~

23 ~~[[3][2]] [Persons holding any legal or equitable interest or right of~~
24 ~~possession in the real property to provide for the maintenance, utilities,~~
25 ~~insurance and security of the property.]~~The city ~~[shall][may]~~ petition the court
26 to permit ~~[these]~~persons [holding legal or equitable interest or right of
27 possession in the real property to provide for the maintenance, utilities,
28 insurance and security of the property reasonable]access to perform these
29 duties or, at the discretion of the City Attorney, to permit the Mayor's designee
30 to perform these duties in lieu of the owners. If the Mayor's designee chooses
31 to perform the duties, the owner(s) shall be responsible for all costs incurred.

32 ~~[[3][4]]~~ Where real property involved contains three or more apartments or
33 other individualized rental units, the city may petition the court to order in lieu

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1 of closure, but in addition to the other orders provided above, that certain
2 named individuals who committed, conducted, promoted, facilitated or aided
3 the commission of a public nuisance be removed from the property, but that
4 other persons lawfully on the premises be permitted to remain, and the property
5 be placed in a special receivership as provided in this subsection. The city shall
6 request that a receiver appointed ex parte by the court take possession of the
7 property to the exclusion of the owners and other persons holding any legal or
8 equitable interest and their managers and agents then in possession, collect
9 rents from the tenants, and pay the operating expenses, taxes, utilities, and
10 maintenance expenses on the property including the cost of abating public
11 nuisances and preventing the same from recurring. The receiver shall not pay
12 the principal or interest on any note, deed of trust, mortgage, installment land
13 contract or similar instrument, and these obligations shall remain in the real
14 property. The city shall petition the court to periodically award the receiver
15 reasonable fees for his or her services to be paid out of the rents, profits, and
16 income. The receiver should account for all income and expenses in
17 accordance with the laws of New Mexico. The city shall petition the court to
18 order the defendants to pay the fees and expenses of the receiver, utilities,
19 maintenance, security, operating expenses, taxes, insurance and other
20 reasonable expenses related to the property to the extent that the rents, income,
21 and profits of the property are insufficient to defray the same. The receiver
22 appointed ex parte shall not be replaced except upon the stipulation of all
23 parties. The city may petition the court to make other reasonable orders
24 consistent with these provisions for the administration of this special
25 receivership.

26 ((~~4~~)(~~5~~)) Any other orders that may be reasonably necessary to access,
27 maintain, and safeguard the property.

28 § 11-1-1-2(~~4~~)(~~5~~) MOTION TO VACATE OR MODIFY TEMPORARY RESTRAINING
29 ORDER[~~OR FOR RETURN OF SEIZED PROPERTY~~].

30 Any defendant or any person holding any legal or equitable interest or right
31 of possession in any property [~~seized or~~]restrained under this ordinance may
32 file a motion to vacate or modify the temporary restraining order[~~or for return~~

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1 ~~of seized property~~. Proceedings on these motions shall be in accordance with
2 the New Mexico Rules of Civil Procedure and applicable laws.

3 § 11-1-1-2~~[5]~~**[6] REMEDIES FOR PUBLIC NUISANCES.**

4 Where the existence of a public nuisance is established in a civil action under
5 Subpart C of this ordinance, the city ~~[shall]~~**[may]** petition the court to enter
6 permanent prohibitory and mandatory injunctions requiring the defendant to
7 abate the public nuisance and take specific steps to prevent the same and other
8 public nuisances from occurring on the real property~~[, in the vehicle]~~, or using
9 the real property~~[, vehicle or other personal property]~~. The permanent
10 prohibitory and mandatory injunction requested by the city may allow the court
11 to consider other remedies as necessary and provided by law to abate the public
12 nuisance. The city ~~[shall]~~**[may]** also petition the court to order, as to any real
13 property~~[, vehicle or other personal property]~~ used to commit, conduct,
14 promote, facilitate or aid the commission of ~~[or flight from]~~any pub~~[l]i~~c
15 nuisance, the following remedies:

16 (1) *Closure [and fencing]of real property and destruction of certain*
17 *structures.* That the real property be closed for a period of not less than one
18 year and not more than three years from the date of the final judgment, plus any
19 extension of that period caused by failure to comply with the conditions for
20 release of the property set out below, and if the city requests, that certain
21 structures upon the real property be destroyed~~[and sufficiently secure fencing~~
22 ~~be installed to prevent unauthorized entry onto the property]~~. ~~[Should the~~
23 ~~structures have personal property within them, the property owner shall remove~~
24 ~~such personal property. Any personal property not removed from the~~
25 ~~structures within 48 hours notice of the city’s intent to destroy the structures~~
26 ~~shall be deemed rubbish and subject to removal at the owner’s expense.]~~The
27 city may request the court to order the defendants to carry out the destruction
28 of the structures~~[or the installation of secure fencing to prevent unauthorized~~
29 ~~entry onto the property]~~.

30 ~~[(A)]~~The city ~~[shall]~~**[may]** petition the court to order the defendants to provide
31 for the maintenance, utilities, insurance, and security of the property during the
32 period of closure, and that~~[,]~~ at the end of the closure period, the real property
33 be released to the owner only upon (a) payment of all expenses incurred by the

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1 city for ~~[seizure,]~~closure, utilities, security, access, destruction of buildings,
2 maintenance, insurance, and other reasonable expenses; and (b) payment of all
3 civil judgments under Subpart C; and (c) execution by all owners and other
4 persons holding any legal or equitable interest or right of possession in the real
5 property of a complete and unconditional release of the city and all of its
6 employees and agents for liability for the ~~[seizure,]~~closure and damages to the
7 property.

8 ~~[(B)]~~In the event that the owners and other persons holding any legal and
9 equitable interest and rights of possession, or any of them, fail, neglect or
10 refuse to pay the fees, expenses, and judgments, or to execute the release
11 provided above, the property shall remain closed. ~~[However, if a year expires~~
12 ~~without the owner making payment, the property shall then forfeit to the~~
13 ~~city.]~~The issuance and execution of the closure order shall not be deemed a
14 bailment of property. The owner of the property remains responsible for the
15 maintenance and security of property subject to the closure order and shall be
16 permitted reasonable access to the property for these purposes upon
17 application to the court.

18 (2) *Receivership of real property*~~[and destruction of certain~~
19 ~~structures]~~. That [the real property be placed into a special receivership];
20 ~~when the city so requests, in lieu of closure of real property, the real property~~
21 ~~be placed into a special receivership]~~[upon the city showing a violation of this
22 ordinance will not be promptly remedied unless a receiver is appointed and that
23 such an appointment is in the best interest of public health, safety and welfare.
24 Any receiver appointed under this section shall have their rights, duties and
25 powers specified by the court in accordance with the provisions in this section].
26 [No receiver shall be appointed until the receiver furnishes a bond or other
27 surety and provides proof of liability insurance as the court deems sufficient in
28 the circumstances of the case. Upon appointment, the receiver shall promptly
29 remedy all violations of this ordinance on the property and renovate the
30 property, as reasonably necessary, so that it can be maintained in a safe and
31 secure condition that does not cause blight to the surrounding community or
32 threaten public health, safety or welfare. In order to secure payment of any
33 costs incurred and repayment of any loans for repair, operation, maintenance,

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1 renovation or management of the property, the receiver shall have a lien on the
2 property that is second in priority to all other municipal liens. No such lien shall
3 be effective unless recorded in the Bernalillo County Clerk's Office.
4 The receiver shall be authorized to collect rent and shall apply the rent collected
5 to payment of any repairs necessary to bring the property into compliance with
6 the sanitary code and pay the property's necessary operation, maintenance,
7 and management expenses, including insurance expenses and reasonable fees
8 of the receiver, and then to payment of any unpaid taxes, assessments,
9 penalties or interest. Any excess of income in the hands of the receiver shall
10 then be applied to payments due any mortgagee or lienor of record.
11 The receiver shall file with the court and with all parties of record, on a
12 bimonthly basis, an accounting of all funds received by and owed to the
13 receiver, and all funds disbursed, and shall comply with such other reporting
14 requirements mandated by court, unless, for cause shown, the court determines
15 that less frequent or less detailed reports are appropriate.
16 Any receiver appointed pursuant to this section may be removed by the court
17 upon a showing the receiver is not diligently carrying out the work necessary
18 to bring the property into compliance with this ordinance or a showing it is in
19 the best interest of public health, safety and welfare to remove the receiver.
20 Nothing in this section shall be deemed to relieve the owner of property of any
21 civil or criminal liability or any duty imposed by reason of acts or omissions of
22 the owner, nor shall appointment of a receiver suspend any obligation the
23 owner or any other person may have for payment of taxes, of any operating or
24 maintenance expense, or of mortgages or liens, or for repair of the
25 premises.][for a period not less than one year and not more than three years
26 from the date of final judgment, plus any extension of that period caused by a
27 failure to comply with the conditions for release of the property set out below,
28 and, if the city requests, that certain structures be destroyed. The city may
29 request the court to order the defendants to carry out the destruction. The city
30 shall petition the court to order the defendants to provide for and pay the
31 maintenance, utilities, security, operating expenses, taxes, insurance,
32 receivership fees, and other reasonable expenses related to the property to the
33 extent that the rents, profits, and income of the property under receivership is

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1 ~~insufficient to defray these expenses, and that at the end of the receivership~~
2 ~~period, the real property shall be released to the owner only upon (a) payment~~
3 ~~of all expenses incurred by the city for seizure, closure, utilities, security,~~
4 ~~access, maintenance, insurance, taxes, receivership and receivership fees, the~~
5 ~~costs of destroying structures, and other reasonable expenses not covered by~~
6 ~~the rents, profits, and income under receivership; and (b) payment of all civil~~
7 ~~judgments under Subpart C; and (c) execution by all owners and other persons~~
8 ~~holding any legal or equitable interest or right of possession in the real property~~
9 ~~of a complete and unconditional release of the city and all of its employees and~~
10 ~~agents, including the receiver, for any liability for the seizure, closure and~~
11 ~~receivership and damages to the property.~~

12 ~~—In the event that the owners and other persons holding any legal or equitable~~
13 ~~interest or right of possession in the real property, or any of them, fail, neglect~~
14 ~~or refuse to pay the fees, expenses, and judgments, or to execute the release~~
15 ~~provided above, the property shall remain under the receivership or be closed~~
16 ~~as provided in Subsection (1) above. The issuance and execution of the~~
17 ~~receivership order shall not be deemed a bailment of property. The owners of~~
18 ~~the property remain responsible for the maintenance and security of the~~
19 ~~property subject to the receivership order and shall be permitted reasonable~~
20 ~~access to the property for these purposes upon application to the court. In the~~
21 ~~event that the income, rents and profits of the receivership, after a complete~~
22 ~~accounting, exceed the costs and expenses of access, seizure, closure,~~
23 ~~maintenance, security, taxes, insurance, destruction of structures, the~~
24 ~~receivership and receivership fees, and all other reasonable expenses related~~
25 ~~to the property, the city shall petition the court to order the receiver to expend~~
26 ~~the remainder first on specific improvements at the property that will abate~~
27 ~~public nuisances or prevent them from recurring, and second, to pay the civil~~
28 ~~judgments due in the case.~~

29 ~~—(3) *Impoundment of vehicles.* That the vehicle be impounded for a period~~
30 ~~of not less than six months and not more than one year from the date of the final~~
31 ~~judgment plus any extension of the period caused by a failure to comply with~~
32 ~~the conditions for release of the vehicle set out below; and that at the end of the~~
33 ~~closure period, the vehicle shall be released to the owners only upon: (a)~~

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1 ~~payment of all towing fees, storage fees, and civil judgments under Subpart C;~~
2 ~~and (b) execution by the owners and lienors of a complete and unconditional~~
3 ~~release of the city and all of its employees and agents for the closure and any~~
4 ~~and all damages to said vehicle.~~

5 ~~—In the event that the owners, lienors, or any of them fail, neglect or refuse to~~
6 ~~pay the fees, expenses, and judgments when due, and execute the release~~
7 ~~provided above, the vehicle shall be forfeited to the city. The issuance and~~
8 ~~execution of the closure order shall not be deemed a bailment of property.]~~

9 ~~[(4)[3]) [*Destruction*][*Removal*] of vehicles. [Where the city so requests, in~~
10 ~~lieu of impoundment of the vehicle, that the vehicle be destroyed][In the event~~
11 ~~the City petitions the court to have real property closed or destroyed pursuant~~
12 ~~to this ordinance, the City may also petition the court to order the defendants~~
13 ~~to remove all vehicles from the property prior to its closure or destruction. Any~~
14 ~~vehicles not removed from the real property within 48 hours of the real~~
15 ~~property's closure or destruction shall be subject to removal at the owner's~~
16 ~~expense.]~~

17 ~~[(5) *Forfeiture of personal property. That the personal property be forfeited*~~
18 ~~*to the city.*]~~

19 **§ 11-1-1-2[7][6] 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 city
29 for its costs from pursuing the remedies under Subpart C of this ordinance.

30 **§ 11-1-1-2[7][8] SUPPLEMENTARY REMEDIES FOR PUBLIC NUISANCES.**

31 In any action in which probable cause for the existence of a public nuisance
32 is established, in the event that the defendants, or any one of them, fails,
33 neglects or refuses to comply with the court's temporary restraining orders,

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

7 **§ 11-1-1-2[9][8] LIEN FOR JUDGMENTS.**

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

14 **§ 11-1-1-[30][29] STIPULATED ALTERNATIVE REMEDIES.**

15 (A) The city and any defendants to an action under Subpart C of this
16 ordinance may voluntarily stipulate to temporary restraining orders, [seizures,
17]closures, receiverships, forfeitures, destruction, judgments, liens, and other
18 remedies, temporary or permanent, that are different or altered from those
19 provided in Subpart C of this ordinance, including [but not limited to]the
20 following:

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

23 (2) Receiverships on other terms, including [but not limited to]terms
24 providing for the payment of secured indebtedness on the subject property,
25 removal or substitution of the receiver, and other terms.

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

28 ~~[(4) Release of seized real property to the party currently entitled to~~
29 ~~possession, or to an agent, manager, or receiver appointed under the~~
30 ~~stipulation, after the public nuisance has been fully abated, steps have been~~
31 ~~taken to prevent public nuisances from recurring, sufficient action has been~~
32 ~~taken to deter public nuisances, and the public interest is protected, or a~~
33 ~~suitable plan to accomplish these goals has been agreed to.]~~

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1 ~~[(4)]~~(5) Reduction or waiver of civil judgments and liens.

2 ~~[(5)]~~(6) Other reasonable stipulations designed to abate the public
3 nuisance, prevent public nuisances from recurring, deter public nuisance
4 activity, and protect the public interest.

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

7 [§ 11-1-1-30 CIVIL FINE.

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

17 (B) General. Whenever the Mayor’s designee imposes a civil fine for
18 violations of this article, the Mayor’s designee shall issue of notice of civil fine
19 directed to the owner of the subject property, their agent and/or responsible
20 party, and, where appropriate, to the occupant of the subject property, as shown
21 on the records of the Bernalillo County Assessor and the Mayor’s designee.
22 The notice of civil fine shall contain:

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

25 (2) A statement that the Mayor’s designee has found the subject property
26 to be in violation of this article;

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

29 (4) The amount of the fine assessed;

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

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

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

7 (C) Method of Service.

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

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

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

26 (D) Appeal. The owner may appeal a civil fine issued pursuant to this
27 article. The request for appeal and the hearing shall comply the procedures
28 outlined in the Independent Office of Hearings Ordinance, ROA 1994, Sections
29 2-7-8-1 to -9.

30 § 11-1-1-31 EMERGENCY ABATEMENT.

31 (A) Notwithstanding any other provision in this code if, in the opinion of the
32 Mayor's designee, the conditions at a property constitute an imminent hazard,
33 the Mayor's designee may order immediate abatement of the hazard without

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1 notice. Such abatement of an imminent hazard shall be limited to the minimum
2 work necessary to remove the hazard and may include disconnection of
3 utilities, securing of the structures, installation of fencing or emergency
4 cleaning of the property to abate the hazard.

5 (B) The city shall pay the cost and expense of such abatement from any
6 appropriation made for that purpose.

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

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

19 **§ 11-1-1-3[4][2] OTHER SEIZURES, CLOSURES, FORFEITURES AND**
20 **CONFISCATIONS.**

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

28 **SUBPART D:**
29 **DRUG LABORATORY SITE REMEDIATION OF CONTAMINATION**

30 **§ 11-1-1-40 TITLE.**

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

33 **§ 11-1-1-41 FINDINGS AND INTENT.**

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1 The City Council finds and states its intent as follows. Clandestine drug
2 laboratory sites are increasing in number in Albuquerque and are a serious
3 health threat to the community. Remediation of the residually contaminated
4 portions of clandestine drug laboratory sites is essential to assure the health,
5 safety and welfare of the community. Property owners must share the
6 responsibility for the clandestine drug laboratory sites on their property by
7 bearing the initial costs of remediation of such sites, subject to restitution as
8 provided in this subpart. This subpart is timely and appropriate because current
9 laws and city regulations are insufficient to address the aforementioned
10 problems. The restrictions contained herein are neither over broad nor vague
11 and are narrowly tailored to serve a substantial government interest.

12 § 11-1-1-42 DEFINITIONS.

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

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

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

32 **DRUG LABORATORY SITE REMEDIATION FIRM**. A professional firm that
33 ~~[is certified by the Albuquerque Police Department and the City Environmental~~

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1 ~~Health Department and that]~~performs remediation of residual contamination
2 from the manufacture of methamphetamine, ecstasy, LSD or any other
3 controlled substance or the storage of chemicals or equipment used in
4 manufacturing methamphetamine, ecstasy, LSD or any other controlled
5 substance.

6 ***ECSTASY (3,4-METHYLENEDIOXY AMPHETAMINE).*** This term has the same
7 meaning prescribed in Section 30-31-6 NMSA 1978 and includes any of the
8 precursor chemicals, regulated chemicals, other substances or equipment used
9 in the unlawful manufacture of Ecstasy and any derivatives thereof.

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

13 ***INDUSTRIAL OR ENVIRONMENTAL HYGIENIST FIRM.*** A professional firm
14 that ~~[is certified by the Albuquerque Police Department and the City
15 Environmental Health Department to]~~conduct[s] pre-remediation testing and
16 post-remediation testing for the remediation of residual contamination from the
17 manufacture of methamphetamine, ecstasy, LSD, or any other controlled
18 substance or the storage of chemicals or equipment used in manufacturing
19 methamphetamine, ecstasy, LSD or any other controlled substance.

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

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

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

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

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

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

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

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

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

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

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

20 (1) If gross contamination is removed from a house, mobile home or
21 recreational vehicle and the notice of removal is posted for the entire house,
22 mobile home or recreational vehicle, then the entire house, mobile home or
23 recreational vehicle, not just the room or rooms in which the gross
24 contamination is found shall be deemed the residually contaminated portion of
25 the property.

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

30 (3) If gross contamination is removed from a hotel, motel room or
31 apartment unit, the adjacent rooms are not affected and the notice of removal
32 is posted only for the contaminated room or apartment unit, then the

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1 contaminated room or apartment unit shall be deemed the residually
2 contaminated portion of the property.

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

5 § 11-1-1-43 DECLARATION OF PUBLIC NUISANCE.

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

9 § 11-1-1-44 CLANDESTINE DRUG LABORATORIES.

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

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

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

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

- 4 (4) The notice of removal shall be sent to the following:
- 5 (a) The address of the owner and the owner of the mobile home or
6 recreational vehicle park as shown on file with the county assessor.
 - 7 (b) The Albuquerque Environmental Health Department.
 - 8 (c) The Albuquerque Fire Department.

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

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

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

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

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

- 27 (1) The following shall be printed in large bold type at the top and bottom
28 of the notice: "Substandard Building. Do Not Enter. Unsafe to Occupy."
- 29 (2) A statement that it is unlawful for any person other than the owner,
30 landlord, manager, law enforcement, an industrial or environmental hygienist
31 firm and/or a drug laboratory site remediation firm to enter the residually
32 contaminated portion of the property until the owner remediates the residually

1 contaminated portion of the property, or in the case of a space rental mobile
2 home or recreational vehicle park, the unit located on the property.

3 (3) A statement that a clandestine drug laboratory was seized or a person
4 was arrested on the property for having chemicals or equipment used in the
5 manufacturing of methamphetamine, ecstasy, LSD or any other controlled
6 substance on the property.

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

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

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

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

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

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

22 (10) A statement that the owner of the property shall remediate the
23 residually contaminated portion of the property in compliance with subsection
24 (C) of this section.

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

29 (C) *Remediation by owner.* The owner of the property shall remediate the
30 residually contaminated portion of the property by retaining an industrial or
31 environmental hygienist firm to pre-test the property to determine the extent of
32 the contamination and the nature of the required remediation. When the
33 industrial or environmental hygienist firm determines that remediation is

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1 required, the owner shall retain a drug laboratory site remediation firm to
2 conduct the remediation. The industrial or environmental hygienist firm and the
3 drug laboratory site remediation firm shall be separate and unaffiliated business
4 entities. ~~[Both firms shall be approved and currently registered with the~~
5 ~~Albuquerque Police Department and the City Environmental Health Department~~
6 ~~during the time they participate in the remediation of residual~~
7 ~~contamination.]~~The owner shall retain the industrial or environmental hygienist
8 firm and the drug laboratory site remediation firm within 30 days of the day of
9 delivery of personal service of the notice of removal or within 35 days of the
10 date the notice of removal is mailed by certified mail or posted on the
11 property. Remediation shall be completed in accordance with the standards for
12 remediation of residual contamination adopted by the Albuquerque Police
13 Department and the City Environmental Health Department within 60 days of the
14 day of delivery of personal service of notice to the owner or within 65 days of
15 the date notice is mailed by certified mail to the owner or for such other period
16 of time that is approved in writing by the Albuquerque Police Department.

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

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1 firm shall issue a final clearance document certifying that remediation of the
2 residually contaminated portion of the property was completed pursuant to the
3 standards for remediation of residual contamination and shall deliver the
4 certification document or send the document by certified mail to the owner. The
5 owner shall provide a copy of the certification of completed remediation to each
6 person and entity listed in subsection (A) (4) of this section, the city's Chief
7 Building Official and the law enforcement agency that issued the notice under
8 that subsection. After the final clearance document has been issued, both of
9 the following apply:

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

12 (2) Any person may use, enter, occupy, rent or sell the property.
13 It shall be the responsibility of the owner of the property to file with the County
14 Assessor the document stating that the residually contaminated portion of the
15 property has been remediated[. The owner][~~and neither the city, the industrial~~
16 ~~or environmental hygienist firm nor the drug laboratory site remediation firm~~]
17 shall [also]be responsible for [~~such filing or~~]the costs associated with filing.
18 The issuance of the document certifying that remediation of the residually
19 contaminated portion of the property was completed pursuant to the standards
20 for remediation of residual contamination shall be a prerequisite for a certificate
21 of occupancy or any city required building inspection and shall not be in lieu of
22 a certificate of occupancy or any city required building inspection.

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

32 ~~[(F) *Record retention.* The City Environmental Health Department shall~~
33 ~~maintain and make available on request all notices of removal and any~~

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1 ~~documents that are created pursuant to subsection (D) of this section. A~~
2 ~~retention schedule for such documents shall be established by the City Clerk.]~~

3 ~~(F)(G)~~ **Notice to buyers and occupants.** The following notice requirements
4 apply until the remediation is complete as provided in subsection (D) of this
5 section:

6 (1) Within five days after a buyer signs a contract to purchase property, the
7 owner shall notify the buyer in writing that methamphetamine, ecstasy, or any
8 other controlled substance was manufactured on such property or that an
9 arrest, as described in subsection (A) of this section, was made. The buyer shall
10 acknowledge receipt of the notice. A buyer may cancel the purchase contract
11 within five days after receiving the notice without liability. If the owner does not
12 comply with this paragraph, the buyer may void the purchase contract.

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

24 (3) Before a customer occupies a room that was the subject of the notice
25 of removal, as described in subsection (A) of this section, the owner or manager
26 shall notify the customer in writing the room was the subject of a notice of
27 removal as described in subsection (A) and (B) of this section, that
28 methamphetamine, ecstasy, LSD or any other controlled substance was
29 manufactured in the room or that an arrest, as described in subsection (A) of
30 this section, was made. The customer shall acknowledge receipt of the notice
31 before taking possession of the room and before signing a room rental
32 agreement. If the owner or manager does not comply with this paragraph, the
33 customer may void the agreement.

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1 (4) Owners are required to notify all agents selling, leasing or renting
2 property that is the subject of a notice of removal that such property is the
3 subject of a notice of removal. When a sales, leasing or rental agent is notified
4 that the property is the subject of a notice of removal, such agent shall notify in
5 writing all prospective buyers, tenants or other occupants about the notice of
6 removal and manufacture of methamphetamine, ecstasy, LSD or any other
7 controlled substance on the property or that an arrest, as described in
8 subsection (A) of this section, was made on the property. Notice shall be made
9 in the same manner as required of the owner in this subsection (G).

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

15 (~~G~~)(H) *Mobile home or recreational vehicle space rental parks.* If a mobile
16 home or recreational vehicle in a space rental park contains a clandestine drug
17 laboratory, the landlord of the park, on receipt of a notice pursuant to
18 subsection (A) of this section, shall notify the owner and lienholder of record of
19 the unit to remove the unit from the park within 30 days. This provision shall not
20 apply when the owner of the contaminated mobile home or recreational vehicle
21 is also the owner of the mobile home or recreational vehicle space rental park
22 in which such contaminated mobile home or recreational vehicle is located. If
23 the unit is not removed within 30 days, the landlord of the park shall remediate
24 the contamination following the requirements set forth in subsections (C) and
25 (D) of this section.

26 (~~H~~)(I) *Restitution to owner.* A person who operates a clandestine drug
27 laboratory and who is not the owner of the property shall pay restitution to the
28 owner of the property for all costs that the owner incurred to remediate the
29 property and, in the instance of a mobile home or recreational vehicle, the cost
30 incurred by the owner of a space rental park for moving and/or remediating such
31 property.

32 (~~I~~)(J) *Remediation by city.* If an owner of property, a vehicle owner, a
33 vehicle lien holder or an owner of a mobile home or recreational vehicle space

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1 park, as described under subsection (H) of this section, fails to comply with the
2 remediation of the residually contaminated property or portion of the property
3 as required in this section, the city may remediate of the residually
4 contaminated portion of the property or seek a court order requiring the owner
5 to remediate in the manner required in this section. If the city is unable to locate
6 the owner within ten days after the issuance of the Certificate of Substandard
7 Property, the city may proceed with remediation. If the city remediates the
8 contamination, the owner shall pay to the city all costs related to such
9 remediation. If the owner fails to pay the city for its costs of remediation, the
10 city shall be entitled to file a lien against such property for the costs related to
11 the remediation and bring legal action against the owner for such remediation
12 costs. Remediation costs shall include~~[, but are not limited to]~~the expense for
13 posting, physical security of the contaminated site, notification of affected
14 people, businesses or any other entit[y][ies], expenses related to the recovery
15 of cost, laboratory fees, cleanup services, costs for testing for residual
16 contamination, removal costs, and cost incurred for an industrial or
17 environmental hygienist firm and a drug laboratory site remediation firm. When
18 a contaminated vehicle is impounded, the vehicle shall not be released to the
19 owner or a lien holder until remediation is completed and paid by the owner or
20 lien holder and impoundment fees are paid by the owner or lien
21 holder. Remediation costs for vehicles in which gross contamination is found
22 shall include the costs for testing for residual contamination regardless of
23 whether residual contamination is actually required to be
24 remediated. Impoundment fees shall include those fees defined as
25 impoundment charges in § 8-5-2-1 ROA 1994. The city or its contractors may
26 remove property as part of its remediation effort.

27 ~~§ 11-1-1-45 PENALTIES.~~

28 ~~—(A) If an owner fails to provide any notice required by this subpart, the owner~~
29 ~~shall be subject to imprisonment up to 90 days and/or a fine of up to \$500 and~~
30 ~~is liable for any harm resulting from the owner's failure to comply with the~~
31 ~~requirements of this subpart.~~

32 ~~—(B) A person who knowingly violates a notice of removal that is issued by a~~
33 ~~law enforcement officer under this subpart is subject to imprisonment up to 90~~

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1 ~~days and/or a fine of up to \$500 for each day such person fails to comply with~~
2 ~~the notice of removal.~~

3 ~~—(C) All other violations of this subpart shall be subject to the penalty~~
4 ~~provisions of § 1-1-99 ROA 1994.]”~~

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

7 “§ 9-8-3 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

8 ~~[MAYOR]~~[MAYOR'S DESIGNEE]. The Mayor[of the City of Albuquerque] or
9 [anyone designated by the Mayor to take the actions authorized under this
10 ordinance]~~[his authorized representative]~~.

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

18 *NONCOMMERCIAL HANDBILL*. Any printed or written matter, any sample, or
19 device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper,
20 booklet, or any other printed or otherwise reproduced original or copies of any
21 matter of literature not included in the aforesaid definitions of a commercial
22 handbill or newspaper.

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

25 *PARK*. A park, reservation, playground, beach, recreation center, zoo, golf
26 course, or any other public area in the city, owned or used by the city and
27 devoted to active or passive recreation.

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

31 *PRIVATE PREMISES*. Any dwelling, house, building, or other structure
32 designed or used either wholly or in part for private residential purposes,
33 whether inhabited or temporary or continuously uninhabited or vacant and shall

1 include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox
2 belonging or appurtenant or such dwelling, house, building, or other structure.

3 **PUBLIC PLACE.** Any and all streets, sidewalks, boulevards, alleys or other
4 public ways and any and all public parks, sources, spaces, grounds and
5 buildings.

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

9 **RUBBISH.** ~~[Nonputrescible solid wastes consisting of both combustible and~~
10 ~~noncombustible wastes, such as paper, wrappings, smoking tobacco products,~~
11 ~~cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, and similar~~
12 ~~materials.]~~ [All waste, including ashes, bottles, cans, carcasses of dead
13 animals, cardboard, cloth, crockery, human or animal excrement, glass,
14 abandoned or unusable household furnishings or appliances, metals, plastics,
15 tree branches and limbs, waste building materials or other items discarded in
16 such a manner as to create a reasonable likelihood of becoming a harborage
17 for insects or vermin or disease, or otherwise create a health or safety hazard.]

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

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

23 **WEEDS.** All rank, noxious, poisonous, harmful, unhealthful vegetation,
24 deleterious to health, and shall include ~~[but is not limited to]~~ the following
25 named plants:

- 26 (1) Pigweed (*Amaranthus retroflexus*).
- 27 (2) Russian Thistle (*Salsola pestifer*).
- 28 (3) Ragweeds (*Ambrosia spp.*).
- 29 (4) Lambsquarter. (*Kenopodium spp.*).
- 30 (5) Kochia.
- 31 (6) London Rocket (*Sisymbrium irio*).
- 32 (7) Flix Weed (*Descurainia sophia*).
- 33 (8) Tansy Mustard (*Descurainia pinnata*).

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- 1 (9) Spurge.
- 2 (10) Silverleaf Nightshade (*Solanum elaeagnifolium*).
- 3 (11) Puncture Vine.
- 4 (12) Field Bind Weed (*Convolvulus arvensis*).
- 5 (13) Purslane.
- 6 (14) Hoary Cress.
- 7 (15) Yellow Foxtail (*Setaria glauca*).
- 8 (16) Green Foxtail (*Setaria Viridis*).

9 The ~~[Mayor]~~[Mayor's designee] is hereby authorized and delegated the
10 authority and duty to determine if any other plants, due to their unhealthy or
11 dangerous attributes or consequences, should be placed on the list of weeds
12 as defined herein and shall put such plants on said list if, after a hearing based
13 on the evidence before him it appears that such plants do come within the
14 meaning of the term weeds as hereinbefore set out.”

15
16 SECTION 3. § 9-8-8 of the Albuquerque Weed and Anti-Litter Ordinance is
17 hereby amended as follows:

18 “§ 9-8-8 MERCHANTS' DUTY TO KEEP SIDEWALKS AND PARKING AREAS
19 FREE OF LITTER.

20 It shall be the responsibility of the person in charge of a place of business to
21 maintain the sidewalk area adjacent to his place of business and his private
22 parking area, if any, used by his patrons for parking, in a reasonably litter free
23 condition. If, in the opinion of the ~~[Mayor]~~[Mayor's designee], the amount of litter
24 in said areas amounts to a nuisance due to odors or eyesore characteristics the
25 ~~[Mayor]~~[Mayor's designee] shall notify the person in charge to provide
26 adequate, approved litter receptacles located so as to be convenient to the
27 patrons of the place of business and/or to parking areas. The person in charge
28 of such business shall be responsible for providing said litter receptacles and
29 be responsible for emptying such containers as often as is necessary to prevent
30 their becoming a nuisance. In no event shall the litter located on sidewalks and
31 driveways adjacent to a place of business be allowed to be swept into the
32 gutters or streets of the city.”

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

3 “§ 9-8-25 NOTICE TO CUT AND REMOVE.

4 If the provisions of this article regarding removal of weeds or litter are not
5 complied with, the ~~[Mayor]~~[Mayor’s designee] or his authorized representative
6 shall notify the owner of any occupied or unoccupied lot or tract of land to
7 comply with the provisions of this article. The notification to the owner of any
8 such lot or tract of land shall be in writing. In the event such owner of such lot
9 or tract of land cannot be determined or the owner shall be a nonresident of the
10 city, such notice may be served by posting a copy of the written notice upon the
11 premises.

12 § 9-8-26 WHEN CITY TO REMOVE.

13 ~~[In those cases where the owner of any occupied or unoccupied lot or tract of~~
14 ~~land is a nonresident of the city or cannot be determined and] [Where]~~
15 compliance with the provisions set forth in the notice has not occurred within
16 ten days, the ~~[Mayor]~~[Mayor’s designee] shall cause such weeds ~~[or litter]~~to be
17 cut and the cuttings or any accumulation of weeds or litter removed. ~~[If the~~
18 ~~owner of any such lot or tracts of land is notified in writing as provided and fails~~
19 ~~to comply with the provisions of this article within ten days, the Mayor may~~
20 ~~cause such weeds or litter to be cut and the cuttings or any accumulation of~~
21 ~~weeds or litter removed. In any event, s][S]hould it appear to be a matter of~~
22 public necessity for health or safety reasons, the ~~[Mayor]~~[Mayor’s designee]
23 may give notice that the weeds or litter must be cut or removed immediately[,]
24 in which event[,] should there be noncompliance[,] the ~~[Mayor]~~[Mayor’s
25 designee] is authorized to cause such weeds ~~[or litter]~~ to be cut and the cuttings
26 or any accumulation of weeds or litter removed immediately. The actual cost of
27 the cutting or removal of weeds or litter plus any other penalties or costs
28 allowed by law in connection therewith, under any of the circumstances herein
29 set out, shall become a lien upon the property from which such weeds or litter
30 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

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1 vegetation or unnecessarily disturb the soil. The scraping and tillage of lots and
2 tracts of land is prohibited unless permission of the ~~[Mayor]~~[Mayor's designee]
3 is first obtained; except, that scraping and tillage as part of normal construction
4 activities or as ground preparation for agriculture or landscaping activities shall
5 be allowed. The ~~[Mayor]~~[Mayor's designee] shall allow scraping and tillage of
6 lots or tracts of land when this will not detract from or violate the clear intent
7 and 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 § 1-
19 1-99 of this code of ordinances to include a minimum fine of \$250. Any person
20 deemed guilty of a subsequent violation of § 9-8-32 shall be subject to a
21 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 article;
26 and \$500 for a third or subsequent violation of this article. Notice of the civil
27 fine shall be appealable under the administrative appeal procedures of this
28 article. Failure to pay the fine, appeal the fine, or prevail at an administrative
29 hearing challenging the fine shall allow the Department to place a lien upon the
30 subject property or any other asset owned by the subject property's owner. The
31 Department may also choose to collect on the fine through any other method
32 allowed by law.

33 **§ 9-8-29 NOTICE OF CIVIL FINE.**

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1 (A) General. When the Department imposes a civil fine for violations of this
2 article, the Department shall issue a notice of civil fine directed to the owner of
3 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 of
5 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 be
10 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 interest
18 in the subject property may appeal from the notice of civil fine to the Office of
19 Administrative Hearings, provided the appeal is made in writing as provided in
20 this code, and filed with the Office of the Administrative Hearings within seven
21 days of service of notice and order, and that failure to timely appeal the notice
22 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 order
26 by certified mail, postage prepaid, return receipt requested, to each such person
27 and owner, responsible party or identified agent at his address as shown on the
28 records of the Bernalillo County Assessor or as known to the Department. If no
29 address of any such person so appears or is known to the Department, then a
30 copy of the notice of civil fine shall be so mailed, addressed to such person, at
31 the address of the building involved in the proceedings and posted thereon.

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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-~~[28]~~[30] APPEAL PROCEDURE ADMINISTRATIVE HEARING.

11 The owner may appeal the determination of the need for weed or litter removal
12 [or a civil fine issued pursuant to this article. The request for appeal and the
13 hearing shall comply with the procedures outlined in the Independent Office of
14 Hearings “IHO” Ordinance, ROA 1994, Sections 2-7-8-1 to -9.] ~~[to the City~~
15 ~~Hearing Officer by filing an appeal within seven calendar days of the date of~~
16 ~~service of the notice to remove. Such request shall be made in writing and filed~~
17 ~~in the Office of the City Clerk. The appeal shall identify the property and state~~
18 ~~the grounds for appeal together with all material facts in support thereof. A filing~~
19 ~~fee of \$50 shall accompany each appeal application. When a hearing is~~
20 ~~requested the Hearing Officer shall send written notice by certified mail, return~~
21 ~~receipt requested, to the owner of the time and place of the hearing. At the~~
22 ~~hearing the owner shall have the right to present evidence as to the alleged facts~~
23 ~~upon which the Mayor based the determination of the need for weed or litter~~
24 ~~removal and any other facts which may aid the Hearing Officer in determining~~
25 ~~whether this article has been violated. The Hearing Officer shall, following the~~
26 ~~hearing, issue a written decision. If the decision is that this article has been~~
27 ~~violated, the decision shall set forth the time within which removal shall be~~
28 ~~completed by the owner. This decision shall be served in the same manner as~~
29 ~~the Notice to Remove.]~~

30 § 9-8-~~[29]~~[31] JUDICIAL REVIEW.

31 The exclusive remedy for parties dissatisfied with the action of the City
32 Hearing Officer shall be the filing of a petition for a writ of certiorari with the

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1 State District Court. The petition for review shall be limited to the record made
2 at the administrative hearing held pursuant to this article.

3 **§ 9-8-3~~2~~^[0] REMOVAL UPON DEFAULT OF OWNER.**

4 After said hearing if removal has not been commenced or prosecuted to
5 completion with due diligence as required by the written hearing decision, the
6 ~~[Mayor]~~[Mayor's designee] shall commence removal upon the premises as set
7 forth in § 9-8-26.

8 **§ 9-8-3~~3~~^[4] ILLEGAL COMMERCIAL HANDBILLS PREVENTION.**

9 (A) The ~~[Mayor]~~[Mayor's designee] shall create and maintain a 24-hour
10 seven-day per week hotline and website for individuals to report commercial
11 handbills in public places.

12 (B) The ~~[Mayor]~~[Mayor's designee] shall implement a public outreach
13 program to educate the public about the penalties for illegally posting
14 commercial handbills in public places.

15 (C) The ~~[Mayor]~~[Mayor's designee] shall initiate a kiosk program to prevent
16 the illegal distribution of commercial handbills. The city kiosk program shall
17 permit kiosks on public rights-of-ways and city owned property where deemed
18 appropriate by the ~~[Mayor]~~[Mayor's designee] in exchange for a reasonable fee.

19 **§ 9-8-3~~4~~^[2] SMOKING TOBACCO PRODUCT LITTER.**

20 No person shall dispose of any portion of a smoking tobacco product except
21 in public receptacles or in appropriate private receptacles. Any smoking
22 tobacco product previously lit shall be extinguished prior to disposal.”
23

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

26 “§ 9-2-1-4 DEFINITIONS.

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

29 *AACC.* Albuquerque Animal Care Center.

30 *AACC VETERINARIAN.* A Veterinarian employed by the City and assigned to
31 *AACC.*

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

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

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

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

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

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

18 **AGGRESSIVE.** With respect to a Companion Animal in the care of AACC, that
19 the Companion Animal is objectively observable as unnaturally hostile or
20 violent toward humans when unprovoked according to a comprehensive
21 checklist of observable objective characteristics of the Companion Animal
22 compiled by two or more Independent Observers conducting evaluations at
23 different times and with respect to a Companion Animal not in the care of AACC,
24 that the Companion Animal is objectively observable as unnaturally hostile or
25 violent toward humans when unprovoked according to the perspective of any
26 reasonable Person objectively observing the Companion Animal.

27 **ALBUQUERQUE ANIMAL CARE CENTER or AACC.** Any City of Albuquerque
28 Animal Welfare Department (AWD) premises, locations or buildings designated
29 as suitable by the [Mayor][Mayor’s designee] for the care, custody and
30 maintenance of Animals seized by the City.

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

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

4 **ANIMAL.** Any living nonhuman mammal, bird, reptile, or amphibian including[,
5 ~~but not limited to,~~] bats, Companion Animals, Companion Birds, Domestic
6 Animals, Exotic or Wild Animals, Livestock, pigeons, porcupines, Poultry,
7 prairie dogs, rabbits and skunks. For the purpose of this article, insects and
8 arachnids are not included in the definition of **ANIMALS**.

9 **ANIMAL BROKERS.** Individual who or group which deals in regulated
10 Animals but does not take physical possession. Must be licensed through the
11 USDA. Sometimes known as “bunchers”, unscrupulous brokers are known to
12 pose as loving adopters, even bringing children with them when responding to
13 “free to good home” ads in local newspapers.

14 **ANIMAL SERVICE OFFICER or ASO.** Any Person employed by the City,
15 assigned to AACC and charged by the ~~[Mayor]~~[Mayor’s designee] with
16 enforcement of this article in the field and to perform other duties as assigned
17 by the ~~[Mayor]~~[Mayor’s designee].

18 **ANIMAL-DRAWN VEHICLE.** Any vehicle pulled by an Animal.

19 **ANIMAL-DRAWN VEHICLE PERMIT or ADVP.** A Permit allowing a Person to
20 attach an Animal to a vehicle for the purpose of moving the vehicle.

21 **ANIMAL EXHIBIT.** A Companion Animal or Companion Bird show, petting zoo,
22 pony ride, rodeo or other Animal activity operated for the purposes of showing
23 Animals. Prohibited Exotic or Wild Animals are forbidden in Animal Exhibits.

24 **ANIMAL FIGHTING PARAPHERNALIA.** Equipment that any reasonable Person
25 would ascertain is used for Animal fighting purposes[, including] ~~[which~~
26 ~~includes, but is not limited to]:~~

- 27 (1) Instruments designed to be attached to the leg of a bird, such as a knife,
28 gaff or other sharp instrument;
- 29 (2) Items to train and condition dogs to fight[, including] ~~[, but not limited~~
30 ~~to,~~] hides or other material used as hanging devices to strengthen or condition
31 dogs, wooden sticks or handles used to pry open dog's jaws, performance
32 enhancing drugs or substances, or food or water additives; and

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1 (3) The presence of any dog that appears to be a fighting dog alone or
2 together with Animals suspected of being used as Bait Animals, including~~[, but~~
3 ~~not limited to,]~~ rabbits, cats and other dogs.

4 **ANIMAL HANDLER.** Any Person employed by the City, assigned to AACC and
5 charged by the ~~[Mayor]~~[Mayor's designee] to humanely receive, inspect, feed,
6 clean and care for Animals Impounded at AACC, to assist the public and Rescue
7 Groups in viewing and selecting Companion Animals and to perform other
8 duties as assigned by the ~~[Mayor]~~[Mayor's designee].

9 **ANIMAL HEALTH TECHNICIAN or VET TECH.** Any Person employed by the
10 City, assigned to AACC and charged by the ~~[Mayor]~~[Mayor's designee] to assist
11 the AACC Veterinarian.

12 **ANIMAL POSSESSION LIMITS.** The number of Animals allowable at one
13 Household without generating the need for a Multiple Animal Site Permit.

14 **ANIMAL SERVICE PROVIDER.** Any Establishment that takes temporary
15 possession of an Animal from the Owner, not on the Owner's property, to
16 perform a service for the Animal or Owner, including~~[, but not limited to,]~~
17 Grooming Parlors, Animal Day Care establishments and Boarding Kennels, but
18 excluding Pet Stores. **ANIMAL SERVICE PROVIDER** does not include a licensed
19 Veterinarian.

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

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

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

31 **BAIT ANIMAL.** An Animal used to train or condition other Animals to fight and
32 includes~~[, but is not limited to,]~~ living dogs, cats and rabbits exposed to attack

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1 by other dogs used or trained to be used in dog fighting or to make the attacking
2 Animal more confident and Aggressive.

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

8 **BASIC MEDICAL CARE.** Reasonable medical care required by the species,
9 including~~[, but not limited to,]~~ periodic examinations by a Veterinarian, prompt
10 Veterinary care when required, age and species appropriate Vaccinations, Basic
11 Grooming and internal and external Parasite Control where appropriate.

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

14 **BITTERING AGENT.** Nontoxic substance added to palatable toxic substances,
15 including~~[, but not limited to,]~~ antifreeze, to make those substances unpalatable
16 to Animals and humans. It is important to note that this additive does not
17 change the toxic nature of antifreeze.

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

21 **BONA FIDE ANIMAL SHOW.** An exhibition approved by the ~~[Mayer]~~[Mayor's
22 designee] of Companion Animals, Companion Birds or Horses in competition
23 for prizes or awards that does not include sales or fighting.

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

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

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

31 **CHEMICAL RESTRAINT DRUG.** Any drug administered to a Companion
32 Animal prior to Euthanasia to reduce aggressiveness, excessive mobility or

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1 stress to the Companion Animal including~~[, but not limited to,]~~ ketamine,
2 xylazine, and acepromazine.

3 **CLERICAL WORKER.** Any Person employed by the City, assigned to AACC
4 and charged by the ~~[Mayor]~~[Mayor's designee] to provide Adoption services to
5 the public, answer telephones, enter data or perform other duties as assigned
6 by the ~~[Mayor]~~[Mayor's designee].

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

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

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

15 **COMPANION BIRD.** A bird commonly kept as a pet by humans and confined
16 on the property of the Owner, including~~[, but not limited to,]~~ parakeets, canaries,
17 lovebirds, finches, parrots, macaws, cockatoos, cockatiels, toucans and lorries,
18 but excluding:

- 19 (1) All of the family Anatidae (waterfowl);
- 20 (2) All of the family Tetraonidae (grouse and ptarmigans);
- 21 (3) All of the family Phasianidae (quail, partridges and pheasants);
- 22 (4) All of the family Meleagridae (wild turkeys) except for the domestic
23 strains of turkeys;
- 24 (5) All of the family Perdidae (francolins);
- 25 (6) All of the family Gruidae (cranes);
- 26 (7) All of the family Rallidae (rails, coots and gallinules);
- 27 (8) All of the family Charadriidae (plovers, turnstones and surfbirds);
- 28 (9) All of the family Scolopacidae (shorebirds, snipe, sandpipers and
29 curlews);
- 30 (10) All of the family Recurvirostridae (avocets and stilts);
- 31 (11) All of the family Phalaropodidae (phalaropes);
- 32 (12) All of the family Columbidae (wild pigeons and doves) except for the
33 domestic strains of pigeons; and

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1 (13) Ducks, geese, chickens and other poultry.

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

6 **CONSTRUCTIVE POSSESSION.** The exercise of dominion and control over
7 the location and treatment of property without taking physical possession of
8 the property.

9 **CRATE.** A device or structure designed for the temporary confinement of an
10 Animal.

11 **CRUELTY.** A Person intentionally killing an Animal without Lawful
12 Justification or mistreating, injuring, maiming, disfiguring, tormenting,
13 torturing, beating, mutilating, burning, scalding, poisoning, attempting to
14 poison or otherwise unnecessarily causing an Animal to suffer physical or
15 emotional harm. Any of the following is a separate act of Cruelty: failing to
16 provide necessary sustenance to an Animal under that Person's Custody or
17 control, failing to provide Adequate Shelter, failing to provide Potable Water,
18 failing to provide palatable, nutritious food of adequate quantity, taunting an
19 Animal, dyeing, or artificially coloring an Animal under the age of 12 weeks,
20 transporting an Animal in an open vehicle without proper restraints, leaving an
21 Animal in a vehicle when the temperature is such that it could cause pain or
22 suffering to the Animal. Abandonment or Neglect of an Animal is Cruelty.
23 Inaction of the Owner toward an Animal in need of Basic or Emergency Medical
24 Care is Cruelty. Surgery by a Veterinarian is not Cruelty but ear cropping, de-
25 barking, tail docking or Alteration by an individual who is not a Veterinarian is
26 Cruelty. Euthanasia by a Veterinarian or a Euthanasia Qualified Employee of
27 AACC shall not be deemed Cruelty provided it is carried out by methods
28 specified in this article or by other generally accepted methods. The application
29 of pesticides or rodenticides by a properly licensed professional is not Cruelty.

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

32 **DEA.** Drug Enforcement Agency.

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

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

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

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

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

11 **DOMESTIC ANIMAL.** Any Animal whose psychology has been determined or
12 manipulated through selective breeding and which does not occur naturally in
13 the wild and includes~~[, but is not limited to,]~~ ferrets, gerbils, guinea pigs,
14 hamsters, horses, mice, rabbits, donkeys, rats and kangaroo rats. All
15 Companion Animals are Domestic Animals but all Domestic Animals are not
16 Companion Animals.

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

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

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

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

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

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

31 **EUTHANASIA QUALIFIED EMPLOYEE.** An AACC employee who is trained and
32 certified by HSUS to be qualified to perform Euthanasia and approved by the
33 ~~[Mayor]~~[Mayor's designee] to perform Euthanasia at City facilities.

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

4 **EXOTIC or WILD ANIMALS.** Those species of Animals that are exotic to
5 humans. **EXOTIC ANIMALS** include~~[, but are not limited to,]~~ any or all of the
6 following orders and families, whether bred in the wild or in captivity, and any
7 or all hybrids. The Animals listed in parentheses are intended to act as examples
8 and are not to be construed as an exhaustive list or limit the generality of each
9 group of Animals, unless otherwise specified:

10 (1) Class Mammalia

11 (a) Order Artiodactyla (hippopotamuses, giraffes, camels, deer, not cattle
12 or swine or sheep or goats)

13 (b) Order Carnivora

14 1. Family Felidae (lions, tigers, cougars, leopards, ocelots, servals, not
15 domestic cats)

16 2. Family Canidae (wolves, coyotes, foxes, jackals, not domestic dogs)

17 3. Family Ursidae (all bears)

18 4. Family Mustelidae (weasels, skunks, martens, minks, not ferrets)

19 5. Family Procyonidae (raccoons, coatis)

20 6. Family Hyaenidae (hyenas)

21 7. Family Viverridae (civets, genets, mongooses)

22 (c) Order Edentatia (anteaters, armadillos, sloths)

23 (d) Order Marsupialia (opossums, kangaroos, wallabies, not sugar
24 gliders)

25 (e) Order Perissodactyla (rhinoceroses, tapirs, not horses or donkeys or
26 mules)

27 (f) Order Primates (lemurs, monkeys, chimpanzees, gorillas)

28 (g) Order Proboscidae (elephants)

29 (h) Order Rodentia (squirrels, beavers, porcupines, not guinea pigs, or
30 rats, or mice, or gerbils, or hamsters)

31 (2) Class Reptilia

32 (a) Order Squamata

33 1. Family Varanidae (only water monitors and crocodile monitors)

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- 1 2. Family Iguanidae (only green iguanas and rock iguanas)
- 2 3. Family Boidae (all species whose adult length has the potential to
- 3 exceed eight feet in length)
- 4 4. Family Colubridae (only boomslangs and African twig snakes)
- 5 5. Family Elapidae (coral snakes, cobras, mambas) - All species
- 6 6. Family Nactricidae (only keelback snakes)
- 7 7. Family Viperidae (copperheads, cottonmouths, rattlesnakes) - All
- 8 species
- 9 (b) Order Crocodilia (crocodiles, alligators, caimans, gavials) - All
- 10 species
- 11 (c) Order Cetacea (whales, dolphins, porpoises)
- 12 (d) Order Pinnipedia (seals, sea lions, walruses)

13 ***EXOTIC OR WILD ANIMAL COLLECTION PERMIT or EWACP.*** The Permit

14 allowing a Person to own a Permissible Exotic or Wild Animal within the

15 Albuquerque City Limits.

16 ***EXTREME CRUELTY.*** A Person is guilty of Extreme Cruelty to Animals if a

17 Person intentionally or maliciously tortures, mutilates, injures or kills an

18 Animal, or if a Person poisons an Animal. Extreme Animal Cruelty is governed

19 by §§ 30-18-1 NMSA 1978 et seq. and is a Fourth Degree Felony, punishable by

20 a fine up to \$5,000 and 18 months imprisonment.

21 ***FACILITY-WIDE CONTAGION.*** The presence of any disease at AACC which

22 could be passed from one Animal to another or to humans to a degree not

23 ordinarily found in nature and exacerbated by the close proximity of large

24 numbers of Animals at AACC.

25 ***FIGHTING BIRD.*** A bird that is possessed, reared or trained for use in, or that

26 is actually used in, a Cockfight or any other fight or contest involving Animals.

27 ***FIGHTING DOG.*** A dog that is trained for use in, or that is actually used in a

28 fight with other dogs or any other Animal.

29 ***FINDER.*** Any Person who discovers and temporarily takes possession of a

30 Companion Animal that has been separated from its Owner.

31 ***FOSTER.*** To take temporary Custody of any Animal with the approval of or at

32 the request of AACC to administer veterinary care, groom, train, provide special

33 feeding, care for or otherwise provide for the Animal.

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

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

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

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

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

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

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

16 **HARNESS.** With respect to a dog, a properly fitting apparatus that is not
17 abrasive and that restrains the dog by the body and shoulders without the
18 involvement of the neck. With respect to a cat, a properly fitting apparatus that
19 is not abrasive featuring adjustable collar buckles around the neck that are
20 joined to an adjustable girth.

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

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

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

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

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

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

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

3 **INDEPENDENT OBSERVER.** A Person who evaluates a dog for Aggressive
4 behavior without knowing about the conclusions or observations of another
5 Person who has also evaluated the dog. **INDEPENDENT OBSERVER** shall also
6 mean a Person who evaluates a dog with no predisposition or prejudice
7 concerning the dog and who is free from influence by any third Person desiring
8 any certain outcome of the assessment.

9 **INJURED.** The condition of an Animal's being harmed, disabled or impaired in
10 a physical sense which is determined by the reasonable objective observation
11 of wounds, injured limbs, broken bones, or disfiguring lacerations.

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

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

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

18 **INTAKE AREA.** The area set aside at each AACC facility where Animals are
19 dropped off by the public, Surrendered by the Owner, or brought in by Animal
20 Service Officers or other public safety personnel.

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

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

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

31 **LAWFUL JUSTIFICATION.** A strictly construed defense to a charge of Cruelty
32 based on an immediate need to defend a threatened Person or Animal from an

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1 imminent attack by an Animal apparently capable of causing death or serious
2 bodily injury to the threatened individual or Animal.

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

8 **LETHAL DRUG.** A chemical that causes the humane death of an Animal and
9 that is approved by the AACC Veterinarian and the ~~[Mayor]~~[Mayor's designee].

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

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

13 **LITTER.** One or more sibling offspring Companion Animal under six months
14 old.

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

16 **LITTER SURRENDER AGREEMENT.** An agreement between the
17 ~~[Mayor]~~[Mayor's designee] or his or her designated representative(s) and the
18 Owner of a Litter.

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

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

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

27 **LOW INCOME PERSON.**

- 28 (1) A Person who possesses:
- 29 (a) An EBT card issued by the State of New Mexico for Food Stamps;
 - 30 (b) Either the annual letter of statement of benefits or monthly benefit
31 card for Supplemental Security Income;
 - 32 (c) An EBT card issued by the State of New Mexico for the Temporary
33 Assistance for Needy Families program; or

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1 (d) A Medicaid health benefit card; or

2 (2) A Person:

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

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

10 ~~[Mayor]~~[Mayor's designee]. The Mayor of the City of Albuquerque or his or her
11 designee.

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

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

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

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

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

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

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

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1 **NEGLECT.** The failure of an Owner to provide care for an Animal in the
2 Owner’s Custody which failure causes an Animal to suffer physical or emotional
3 harm.

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

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

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

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

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

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

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

24 **PERMIT.** A document evidencing approval by the ~~[Mayor]~~[Mayor’s designee]
25 to conduct a certain activity or possess a certain Animal.

26 **PERMIT HOLDER.** A qualified person to whom a valid permit has been
27 provided.

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

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

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

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

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

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

9 **POSSESSION.** Custody of an Animal.

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

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

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

17 **PROOF OF OWNERSHIP.** Any documentation or evidence which proved to the
18 satisfaction of the ~~[Mayor]~~[Mayor's designee] that a Person is the Owner of an
19 Animal, including~~[, but not limited to,]~~ a Microchip identification, Veterinarian
20 invoice, official registration, or photographs of the Animal.

21 **PROTECTIVE CUSTODY.** The temporary control over and care of an Animal at
22 AACC.

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

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

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

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

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

9 **REHABILITATORS.** Individuals who provide professional care to sick, injured,
10 and orphaned wild animals so they can ultimately be returned to their natural
11 habitats. Such rehabilitation is not an attempt to turn wild animals into pets.
12 Patients are held in captivity only until they are able to live independently in the
13 wild.

14 **RESCUE GROUP or RESCUE INDIVIDUAL.** Those groups or individuals
15 approved by the ~~[Mayor]~~[Mayor's designee] for the purpose of Adopting
16 Animals from AACC at a reduced rate to provide needed medical, grooming,
17 behavioral or rehabilitative services in order to facilitate successful Adoptions
18 of Animals.

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

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

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

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

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

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

32 **SECURE FENCE.** A visible protective or confining barrier that prevents any
33 Animal, including Guard Dogs, from escaping the property on which the Animal

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1 is being restricted. The Secure Fence shall also reasonably protect the Animal
2 within the fence from other Animals or people coming into contact with the
3 restrained Animal. This includes a dog run type structure.

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

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

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

10 **SERVICE ANIMAL.** A dog trained or being trained by a recognized school for
11 training dogs to assist Persons with disabilities; an Animal recognized as a
12 Service Animal pursuant to the American with Disabilities Act of 1990; or any
13 other Animal approved by the Governor’s Committee on Disability as
14 acceptable in public places and trained to provide some special assistance to a
15 Person with a disability.

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

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

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

26 **STAFFING LEVELS FOR ANIMAL CARETAKING.** The minimum number of
27 kennel staff that must be available at AACC according to the Animal population
28 at AACC as set forth in the October 2000 HSUS Report to the Albuquerque
29 Animal Services Division under the heading titled "Staffing Levels for Animal
30 Caretaking" at page 96 of said report and the minimum number of ASOs that
31 must be available according to the HSUS Report at page 159.

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

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- 1 **SURRENDER.** The relinquishment of Ownership of an Animal to AACC by the
2 Owner of the Animal.
- 3 **TATTOO.** An indelible mark placed on an Animal to serve as Permanent
4 Identification.
- 5 **TIME.** Days spent at AACC.
- 6 **TREATABLE ILLNESS.** An illness, injury, impairment, or physical/mental
7 condition that can be reasonably treated using proper medication.
- 8 **TROLLEY.** A cable strung between two fixed and stable points, to which a dog
9 on a short lead is attached, allowing for freedom of movement.
- 10 **TROLLEY PERMIT.** A permit issued by the City authorizing the use of a
11 Trolley. In order to obtain a Trolley Permit, the applicant must prove that all
12 other means of restricting the Animal to the personal property have been
13 exhausted.
- 14 **UNIDENTIFIED.** An animal that has no identification sufficient to allow AACC
15 to determine the Owner's identity.
- 16 **USDA.** The United States Department of Agriculture or its successor.
- 17 **VACCINATION or VACCINATE.** Administer a vaccine to an Animal, including[,
18 ~~but not limited to,~~] rabies, distemper, parvo, para influenza, corona virus or
19 bordatella and other vaccines deemed necessary from time to time by the
20 ~~[Mayor]~~[Mayor's designee].
- 21 **VERMIN.** Wild rodents and various insects including flies, mosquitoes, ants
22 and wasps.
- 23 **VETERINARIAN.** A Doctor of Veterinary Medicine licensed to practice in the
24 State of New Mexico.
- 25 **VETERINARY EMERGENCY CLINIC or VEC.** Any entity which contracts with
26 the city for Veterinarian services.
- 27 **VOLUNTEER.** Any Person who performs any Animal services function or
28 assists any AACC employee without compensation.
- 29 **VOLUNTEER COORDINATOR.** A person employed by the city, of at least class
30 M-14, assigned to AACC for the purpose of recruiting and maintaining a cadre
31 of highly committed volunteers.
- 32 **WOLF HYBRID.** The offspring of a domesticated dog that has been bred with
33 a wolf.

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1 **WORKING DAYS.** The days AACC is open to the public.
2 **ZOO.** The Rio Grande Zoological Park and others zoos accredited by the
3 American Zoological Association.

4 **§ 9-2-1-5 ADMINISTRATION.**

5 *Rules and Regulations.* Reasonable rules and regulations may be prescribed
6 by the ~~[Mayor]~~[Mayor's designee] to carry out the intent and purpose of this
7 article, pursuant to standards created by this article.”

8
9 **SECTION 6. § 9-2-2-1(C)(1) is hereby amended as follows:**

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

12 (1) Owners of Companion Animals may seek an exemption from this
13 regulation if Alteration would be dangerous for the Companion Animal due to
14 advanced age or health issues. The ~~[Mayor]~~[Mayor's designee] may grant this
15 exemption if the Owner of the Animal can provide proof in the form of a letter
16 from a Veterinarian stating such reasons.”

17
18 **SECTION 7. § 9-2-2-6(B) is hereby amended as follows:**

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

30
31 **SECTION 8. § 9-2-3-2 through § 9-2-3-6 are hereby amended as follows:**

32 “**§ 9-2-3-2 PERMITS: GENERAL PROVISIONS.**

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

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1 (B) The ~~[Mayor]~~[Mayor's designee] can refuse to issue, revoke, suspend or
2 modify Permits and impose conditions or limits upon the issuance of Permits,
3 including the declaration of moratoria regarding issuance of Permits.

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

6 (D) The ~~[Mayor]~~[Mayor's designee] shall charge a reasonable inspection fee
7 for compliance inspections.

8 (E) Permits are not transferable or refundable.

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

10 **§ 9-2-3-3 PERMIT HOLDERS: GENERAL DUTIES AND REQUIREMENTS.**

11 Permit Holders must comply with all the requirements of this article, state law,
12 and federal law. Additionally, Permit Holders must comply with the following
13 duties and requirements. Any violation by a Permit Holder may result in
14 revocation, suspension or modification of the Permit.

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

16 (B) Permit Holders shall comply with all special requirements pertaining to
17 the type of Permit held.

18 (C) *Inspections.*

19 (1) A permitted Establishment, other than a residence, shall allow entry and
20 inspection of the Permit Holder's premises by the ~~[Mayor]~~[Mayor's designee].
21 Upon presentation of proper identification, the ~~[Mayor]~~[Mayor's designee] shall
22 be allowed to enter any Permitted Establishment for the purpose of making an
23 inspection of the premises for compliance with this article or an inspection to
24 ascertain the existence or nonexistence of conditions dangerous to health or
25 safety or otherwise relevant to the public interest in conformance with the
26 provisions of the Public Health Act, NMSA 1978, 24-1-1 et seq. (2006).

27 (2) The holder of a Permit pertaining to a permitted activity in a residence
28 may consent to an inspection but also has the right to deny entry for an
29 inspection or schedule the inspection at a convenient time and attempt to prove
30 compliance to the satisfaction of the ~~[Mayor]~~[Mayor's designee] by means other
31 than inspection. If the ~~[Mayor]~~[Mayor's designee] finds that the Permit Holder is
32 not in compliance, the Permit Holder may request an Administrative Hearing to
33 prove compliance to the satisfaction of the Administrative Hearing Officer.

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1 Nothing herein limits the authority of the city or other law enforcement authority
2 to seek or obtain a search warrant if there is probably cause of crime on private
3 property or an inspectorial order for the purpose of ascertaining the existence
4 or nonexistence of conditions dangerous to health or safety or otherwise
5 relevant to the public interest.

6 (3) The Person in Charge of the Permitted Premises shall be allowed to
7 accompany the ~~[Mayor]~~[Mayor's designee] on his inspection.

8 (4) Upon completion of an inspection of a Permitted Premises, the
9 ~~[Mayor]~~[Mayor's designee] shall prepare a written inspection report stating
10 whether the Permitted Premises is in compliance with or in violation of the
11 requirements of this article.

12 (5) If the ~~[Mayor]~~[Mayor's designee] determines the Permitted Premises is
13 not in compliance with the provisions of this article, the report shall specify the
14 nature of the noncompliance.

15 (6) The ~~[Mayor]~~[Mayor's designee] and the Person in Charge of the
16 Permitted Premises shall sign the inspection report.

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

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

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

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1 (E) Permit Holders shall comply with all city ordinances including ~~[, but not~~
2 ~~limited to,]~~ the Integrated Development Ordinance and Noise Ordinance
3 provisions that pertain to Animals.

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

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

12 (H) The Permit Holder shall notify the ~~[Mayor]~~[Mayor's designee] of any
13 changes which may affect the status of the Permit and shall keep the
14 ~~[Mayor]~~[Mayor's designee] informed of any changes in the Permit Holder's
15 name, address, home and business telephone numbers, location of the
16 Permitted Premises, emergency contacts and activities covered by the Permit.

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

19 **§ 9-2-3-4 PERMIT RENEWALS.**

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

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

24 (C) Failure to renew a Permit as specified shall result in the expiration of the
25 Permit. In addition to the renewal fee the ~~[Mayor]~~[Mayor's designee] may charge
26 a late fee.

27 **§ 9-2-3-5 PERMIT APPLICATIONS.**

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

29 (B) *Application Process.*

30 (1) The application form shall require the applicant to affirm under penalty
31 of perjury that the applicant meets the standards of a Qualified Adopter and to
32 provide information that is sufficient to assure the ~~[Mayor]~~[Mayor's designee]
33 that the applicant has the knowledge and facilities adequate to care for the

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1 Animals covered by the Permit in a manner that protects both the Animals and
2 the public.

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

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

12 (4) Within 30 days of the receipt of a Permit application ~~[Mayor]~~[Mayor's
13 designee] shall review the application and inspect the premises. The
14 ~~[Mayor]~~[Mayor's designee] shall approve, conditionally approve or deny the
15 Permit application and notify the applicant in writing of the decision.

16 (5) The ~~[Mayor]~~[Mayor's designee] may approve an application only after
17 the following determinations are made:

- 18 (a) the standards established by this article and other applicable laws and
19 regulations have been met;
- 20 (b) the issuance of a Permit will not result in activity which presents a
21 danger to the public health, safety or welfare; and
- 22 (c) the issuance of a Permit does not create a nuisance for any Person.

23 (6) If any affected party wishes to appeal the ~~[Mayor]~~[Mayor's designee]'s
24 decision regarding a Permit application, the party may request an
25 Administrative Hearing before the Administrative Hearing Officer.

26 § 9-2-3-6 INTACT COMPANION ANIMAL PERMIT OR ICAP.

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

29 (A) All Intact Companion Animals must be Permanently Identified by a
30 Microchip or other identification method acceptable to the ~~[Mayor]~~[Mayor's
31 designee] and registered with the AACC before an ICAP can be issued.

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

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

5 (D) If an Intact Companion Animal that has been issued an ICAP is
6 Impounded twice by AACC, the ICAP will be automatically revoked and the
7 Intact Companion Animal will be required to be Altered. If an Intact Companion
8 Animal is Impounded twice and must therefore be Altered, the Permit Holder
9 shall pay AACC to Alter the Companion Animal.

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

13 (F) *Medical Waiver Certificate.*

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

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

20 (3) Upon receipt of a Medical Waiver Certificate, the ~~[Mayor]~~[Mayor's
21 designee] may request a second opinion from a different Veterinarian.

22 (4) The ~~[Mayor]~~[Mayor's designee] may direct the AACC Veterinarian to
23 examine any Animal listed in a Medical Waiver Certificate if there appears to be
24 an abundance of Medical Waiver Certificates from one particular Veterinarian or
25 Veterinary clinic.

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

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

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

6
7 SECTION 9. § 9-2-3-8 (D) is hereby amended as follows:
8 “ (D) No Person shall keep or maintain more than 15 Companion Animals at
9 any MCASP site, no more than four of which can be Intact. This limit may be
10 exceeded under special circumstances determined by the ~~[Mayer]~~[Mayor’s
11 designee].”

12
13 SECTION 10. § 9-2-3-9 through §9-2-3-10 are hereby amended as follows:
14 “§ 9-2-3-9 PERMISSIBLE EXOTIC OR WILD ANIMAL COLLECTION PERMIT OR
15 EWACP.

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

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

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

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

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1 (E) Exotic or Wild Animals shall never be released from captivity within the
2 city limits without written permission from the ~~[Mayor]~~[Mayor's designee]
3 whether or not the Owner has an EWACP.

4 (F) The ~~[Mayor]~~[Mayor's designee] may Seize the Exotic or Wild Animal for
5 its Owner's failure to obtain an EWACP or comply with this article and such
6 Animal shall become the property of the city. The EWACP Holder or Owner of
7 the Exotic or Wild Animal is liable for any costs incurred by the city and such
8 costs may result in a lien being placed against the Exotic or Wild Animal.

9 (G) The ~~[Mayor]~~[Mayor's designee] shall use Seizure procedures which
10 protect the public, the Exotic or Wild Animal and other Animals. The
11 ~~[Mayor]~~[Mayor's designee] may convey an Exotic or Wild Animal in his
12 possession to any Zoo, Sanctuary or refuge or dispose of the Animal in a
13 Humane Manner.

14 § 9-2-3-10 GUARD DOG SITE PERMIT OR GDSP.

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

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

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

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

24 (D) A GDSP will not be granted for property in a Residential Zone or within
25 250 feet of a school.

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

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

31 (G) If the ~~[Mayor]~~[Mayor's designee] determines it is necessary to control
32 noise at the Guard Dog Site, the ~~[Mayor]~~[Mayor's designee] may require the

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1 Owner of the site or GDSP Holder to construct a barrier which breaks the Guard
2 Dog's line of sight to the exterior and adequately buffers the noise.

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

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

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

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

12 (J) Vehicles used to transport Guard Dogs shall be secured so the public is
13 protected from Injury, shall be constructed or modified to ensure that the Guard
14 Dog is transported in a safe, humane manner and that does not violate §§ 9-2-
15 2-6 et seq., and shall be posted with warning signs on each side of the vehicle.

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

19
20 SECTION 11. §9-2-3-12 through §9-2-3-14 are hereby amended as follows:
21 “§ 9-2-3-12 PET STORE PERMIT OR PSP.

22 Pet Stores shall not sell Companion Animals but may sell other living
23 creatures including~~[, but not limited to,]~~ fish, birds, rodents, insects, arachnids,
24 reptiles and other Permissible Exotic Animal.

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

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

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

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

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

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

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

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

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

15 (J) Thorough and accurate records for each Animal that passes through a
16 PSP site must be maintained and kept for three years and must be made
17 available upon demand by the ~~[Mayor]~~[Mayor's designee]. These records shall
18 include~~[, but are not limited to,]~~ the name, address and telephone number of
19 each Person who bought an Animal and information on where each Animal
20 came from originally.

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

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

26 § 9-2-3-13 TROLLEY PERMIT.

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

29 (A) The ~~[Mayor]~~[Mayor's designee] may issue a Trolley Permit upon an
30 applicant's proving the following:

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

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

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

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

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

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

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

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

15 § 9-2-3-14 ANIMAL-DRAWN VEHICLE PERMIT OR ADVP.

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

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

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

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

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

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

32 (b) Serious injury or illness; or

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

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

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

6 (5) Animals used to pull Animal-Drawn Vehicles shall be allocated at least
7 30 minutes of rest for every two hour work period. The maximum working period
8 for any one Animal shall be eight hours in every 24 hour period. No Animal used
9 to pull an Animal- Drawn Vehicle shall be overridden or driven in a manner that
10 might result in overheating or exhaustion.

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

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

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

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

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

22 (11) In addition to issuing any applicable citations, the ~~[Mayer]~~[Mayor's
23 designee] may order a Quarantine of the entire premises where the Animals
24 used to pull Animal- Drawn Vehicles are being stabled or any part thereof for
25 any of the following conditions in one or more of the Animals:

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

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

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

31 (12) Owners and operators of Animal-Drawn Vehicles shall not permit
32 unsanitary conditions to be present on any route or in any Animal rest area or

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1 area where animals are kept. All such areas shall be kept clean and free of
2 conditions which might attract insects, parasites or rodents.”

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

5 “ (A) Sixty percent of all net Permit fees collected under the HEART
6 Ordinance and 60% of fees for microchipping, spaying and neutering performed
7 by the City, shall be dedicated exclusively to programs for the free
8 microchipping and the free spaying and neutering of Companion Animals for
9 Low Income Persons, Moderate Income Persons, Seniors and when possible,
10 the general public. All fees listed in this article are a minimum fee amount and
11 may be increased administratively by the ~~[Mayer]~~[Mayor’s designee].”

12
13 SECTION 13. § 9-2-4-4 (A) and (B) are hereby amended as follows:

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

19 (B) *Commercial Property*. No Person shall display, sell, deliver, offer for sale,
20 barter, auction, give away, or otherwise dispose of any Animal upon commercial
21 property including parking lots, with or without the property owner's
22 permission. PSP Holders are limited to the property the Permit was issued for.
23 Adoption events approved by the ~~[Mayer]~~[Mayor’s designee] are exempt.”

24
25 SECTION 14. § 9-2-4-5 is hereby amended as follows:

26 “§ 9-2-4-5 ANIMAL RACING.
27 It shall be unlawful for any person to hold, conduct, attend or operate live
28 Animal racing for public exhibition, pari-mutuel betting or special exhibition
29 events. The exception to this prohibition is horse racing and charitable events
30 with the approval of the ~~[Mayer]~~[Mayor’s designee].”

31
32 SECTION 15. § 9-2-4-8(C) is hereby amended as follows:

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1 “ (C) No Person shall commit the offense of Cockfighting. When any Person
2 is charged with Cockfighting, the ~~[Mayor]~~[Mayor’s designee] shall take the
3 Fighting Birds at the location into Protective Custody. A Person commits the
4 offense of Cockfighting if the person knowingly:

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

7 (2) promotes or participates in, or performs services in furtherance of, the
8 conducting of a Cockfight. Services in furtherance of a Cockfight include~~[, but~~
9 ~~are not limited to,]~~ transporting spectators to a Cockfight, handling Fighting
10 Birds, organizing, advertising or refereeing a Cockfight and providing, or acting
11 as a stakeholder for, money wagered on a Cockfight;

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

14 (4) suffers or permits a place in the possession or control of the Person to
15 be occupied, kept or used for the conducting of a Cockfight;

16 (5) manufactures, buys, sells, barter, exchanges, possesses, advertises
17 or otherwise offers to sell a Gaff, Slasher or other sharp implement designed for
18 attachment to a Fighting Bird or any other bird; or

19 (6) attends a Cockfight or pays admission at any location to view or bet on
20 a Cockfight.”

21
22 SECTION 16. § 9-2-5-1(B) is hereby amended as follows:

23 “ (B) *Found Companion Animal.*

24 (1) Any Person who finds a Stray Companion Animal may possess and
25 temporarily care for such Companion Animal pursuant to the terms of this
26 article.

27 (2) The provisions of this article apply equally to both the Finder and the
28 Owner.

29 (3) The Finder may keep such Companion Animal at the Household of the
30 Finder and need not deliver the Animal to AACC so long as the requirements of
31 this section are met.

32 (4) These provisions do not apply if the Companion Animal is Owned or
33 claimed by any Person known to the Finder and is or may be the subject of a

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1 dispute between the Finder and any other Person concerning ownership or
2 Custody of the Companion Animal.

3 (5) Within 24 hours of the time the Companion Animal is found, the Finder
4 must contact AACC and register as a Finder with AACC.

5 (6) No Person who does not qualify as a Qualified Adopter shall register or
6 be allowed to register hereunder and such Person must immediately surrender
7 the Found Animal to AACC upon demand of the ~~[Mayor]~~[Mayor's designee].

8 (7) To register, the Finder shall provide a description of the Companion
9 Animal including, when applicable, any License, Microchip or other
10 identification on the Companion Animal, the time and date when the Animal was
11 found, and the location where the Animal was found.

12 (8) The Finder shall determine if the Companion Animal is Microchipped by
13 taking the Companion Animal to any Person who can scan and read a Microchip,
14 by calling AACC and requesting an ASO to come to the Household to scan the
15 Animal or by delivering the Animal to AACC so it can be scanned.

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

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

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

24 (12) If the Finder wishes to own the Found Companion Animal, the Finder
25 shall so notify AACC and said Animal shall become the property of the Finder
26 10 days from the registration date if no Person Reclaims the Companion Animal.

27 (13) Within the 10 days, if any Person purports to be the actual Owner of
28 the Companion Animal, such Person shall contact AACC and not the Finder.
29 The ~~[Mayor]~~[Mayor's designee] may require Proof of Ownership. If the claimant
30 is in fact the Owner, the ~~[Mayor]~~[Mayor's designee] shall order the registered
31 Finder to return the Companion Animal to AACC for Reclaim by the Owner and
32 the Finder shall comply.”

33

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

2 “§ 9-2-6-1 RABIES.

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

7 (B) *Anti-Rabies Vaccination.* All Owners of Companion Animals or ferrets
8 over the age of three months shall have Companion Animals and ferrets
9 Vaccinated against rabies no less frequently than required under New Mexico
10 State law. The Anti-Rabies Vaccination shall be administered by a Veterinarian
11 who also shall issue an Anti-Rabies Vaccination certificate and tag. The
12 ~~Mayor~~Mayor's designee may require Animals other than Companion Animals
13 or ferrets to receive annual Anti- Rabies Vaccinations. The Veterinarian
14 administering the Anti-Rabies Vaccine to an Animal shall issue the Owner an
15 Anti-Rabies Vaccination certificate and tag, each bearing the same number. The
16 Veterinarian shall legibly record, on the approved certificate, in the appropriate
17 areas the name and address of the Owner of the Animal, a description of the
18 Animal, the date of Vaccination and the expiration date of the period of
19 immunity, sterilization status, and Veterinary practice name. This information
20 shall be delivered by the Veterinarian to the ~~Mayor~~Mayor's designee in
21 accordance with this article. The Owner of a Companion Animal or a ferret shall
22 produce its certificate of Anti-Rabies Vaccination upon demand by the
23 ~~Mayor~~Mayor's designee.

24 (C) *Potentially Rabid Animals.* The Owner of an Animal having rabies or
25 showing signs of rabies, an Animal bitten by a rabid Animal or an Animal that
26 has been exposed to rabies shall immediately isolate the Animal in a Secure
27 Facility or within a Secure Fence where it cannot possibly come into contact
28 with any other Animals or humans other than the Owner. Any Person who has
29 knowledge of an Animal infected by or exposed to rabies shall immediately
30 notify the ~~Mayor~~Mayor's designee of the location of the affected Animal. The
31 Animal shall be surrendered by its Owner to the ~~Mayor~~Mayor's designee upon
32 demand. The Animal shall be dealt with in accordance with state law.

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1 It is the duty of the Owner of an Animal that Bites a Person and of the Person
2 bitten by an Animal to report the Bite to the ~~[Mayor]~~[Mayor's designee] within
3 24 hours after the Bite occurs. If deemed necessary by the ~~[Mayor]~~[Mayor's
4 designee], the Owner shall surrender the Animal to the ~~[Mayor]~~[Mayor's
5 designee] for Impoundment, Quarantine, observation or destruction and rabies
6 testing at the ~~[Mayor]~~[Mayor's designee]'s discretion. A physician who renders
7 medical treatment to a Person bitten by an Animal shall report the Bite to the
8 ~~[Mayor]~~[Mayor's designee] within 24 hours of such treatment. Such medical
9 treatment shall be paid for by the Owner of the Animal. The physician shall
10 report the name, sex, and address of the Person bitten, as well as the type and
11 location of the Bite on the Person's body. The physician shall give the name
12 and address of the Owner of the Animal to the ~~[Mayor]~~[Mayor's designee] and,
13 if known, any other facts that may assist the ~~[Mayor]~~[Mayor's designee] in
14 locating the biting Animal and in ascertaining the immunization status of the
15 Animal.

16 (D) *Quarantine.* An Animal that has bitten or is suspected of biting a Person
17 shall be confined securely at a location for a period of time deemed necessary
18 by the ~~[Mayor]~~[Mayor's designee]. The Owner of the Animal shall be responsible
19 for and bear the cost of confinement. If the Owner does not confine the Animal
20 as required by the ~~[Mayor]~~[Mayor's designee], the ~~[Mayor]~~[Mayor's designee]
21 may Seize and Impound the Animal and will keep it under Protective Custody at
22 AACC for no longer than ~~[fifteen]~~[15] days and the Owner shall pay all related
23 costs before Reclaiming the Animal. After 15 days of Protective Custody under
24 this subsection, the Animal will become the property of the City and may be
25 routed or disposed of under the terms of this article. The ~~[Mayor]~~[Mayor's
26 designee] may consent to confinement on the Owner's premises only if the
27 Owner can prove to the ~~[Mayor]~~[Mayor's designee]'s satisfaction that the
28 Animal cannot escape. Before the Owner's premises can be used for Animal
29 confinement, the premises shall be inspected and must be approved for such
30 purpose by the ~~[Mayor]~~[Mayor's designee]. A Person who has custody of an
31 Animal that has bitten a Person shall immediately notify the ~~[Mayor]~~[Mayor's
32 designee] if the Animal shows any signs of sickness, abnormal behavior or if
33 the Animal escapes confinement. If the Animal dies while in confinement, the

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1 Person having custody of the Animal shall notify the ~~[Mayor]~~[Mayor's designee]
2 immediately and surrender the deceased Animal to the ~~[Mayor]~~[Mayor's
3 designee]. Any Animal Quarantined for rabies will, on completion of the
4 Quarantine period, be Microchipped for positive and Permanent Identification
5 as a condition of Quarantine release or Reclaim. An Animal being Quarantined
6 by AACC will receive the Microchip prior to being released. The Owners of any
7 Animal Quarantined by the Owner will immediately make arrangements for
8 Microchipping their Quarantined Animal with a Veterinarian of their choice or
9 AACC, with the cost for such services being borne by the Owner. Microchipping
10 a Quarantined Animal must be completed within 10 days of the Quarantine and
11 failure to do so is a violation of this article.

12 (E) *Veterinarians.*

13 (1) Each Veterinarian that Vaccinates shall deliver to the city information
14 regarding all Anti-Rabies Vaccinations administered during the preceding
15 month by the fifteenth day of the following month by either hard copy or in an
16 electronic format approved by the city.

17 (2) Approved Veterinarians shall receive a credit of fifty cents for each
18 Vaccination certificate submitted as a hard copy and one dollar for each
19 submitted electronically. The credits will only be granted if the information is
20 received by the fifteenth day of the month immediately following the month in
21 which the Vaccination certificate was issued and if the information is complete
22 and accurate as determined by the ~~[Mayor]~~[Mayor's designee].

23 (3) Veterinarians shall post and maintain a sign clearly visible to the public
24 stating that dogs and cats must be spayed, neutered or permitted in accordance
25 with the ordinance [including the proper citation] and have anti-rabies
26 vaccinations as mandated by the State of New Mexico and the City of
27 Albuquerque. AACC will provide one sign free to each Veterinarian.”
28

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

30 “§ 9-2-7-1 INSPECTIONS AND HEARING PROCESS.

31 (A) Permitted matters must be regulated by the city to protect Animals and
32 the public. A Permit gives a Person the privilege to possess Animals and engage
33 in activities in exchange for an agreement by the Permit Holder to care for

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1 Animals pursuant to the standards in this article and protect the public. A Permit
2 is not a property right and can be revoked, suspended, conditioned or limited
3 by the city. The city may declare moratoria regarding the issuance of Permits or
4 temporarily limit or condition Permits from time to time. Any Person who does
5 not have a Permit and is engaged in any activity that requires a Permit under
6 this article is guilty of a petty misdemeanor under § 1-1-99 ROA 1994. Each day
7 of activity without a Permit is a separate petty misdemeanor offense. The
8 absence of a Permit and engagement in activity prohibited hereunder is prima
9 facie evidence of a petty misdemeanor. Permits automatically expire one year
10 from the date granted unless otherwise specifically provided in this article.
11 Permits are not transferable. The ~~[Mayor]~~[Mayor's designee] may promulgate
12 regulations consistent with this article. The following provisions apply to
13 revocation, suspension or limitation and other administrative enforcement
14 actions concerning Permits.

15 (B) *Violations and Inspections.* If the ~~[Mayor]~~[Mayor's designee] discovers a
16 violation of this article by a Permit Holder or any citizen complains about the
17 activities allowed under a Permit and the ~~[Mayor]~~[Mayor's designee] finds that
18 such complaint is valid, the ~~[Mayor]~~[Mayor's designee] shall give notice of the
19 violations by means of an inspection report or other written notice. The
20 notification shall:

- 21 (1) Set forth each specific violation;
- 22 (2) Establish a specific and reasonable period of time for the correction of
23 the violation;
- 24 (3) State that failure to comply with a notice issued in accordance with the
25 provisions of this article may result in [a civil fine being assessed or] immediate
26 suspension or revocation of the Permit; ~~[and]~~
- 27 (4) State that an opportunity for appeal from a notice or inspection findings
28 will be provided if a written request for a hearing is filed with the ~~[Mayor]~~[Office
29 of the City Clerk] within ~~[five-15]~~ days of receipt of the notice [in accordance
30 with the procedures outlined in the Independent Office of Hearings Ordinance,
31 ROA 1994, Sections 2-7-8-1 to 2-7-8-9; and

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1 (5) Where a civil fine has been assessed: state the amount of the fine
2 assessed; state that the fine must be paid in full within 30 days of the date of
3 the notice; and contain instructions for how the fine can be paid.]

4 (C) *Notice.* Notices under this section shall be deemed properly served and
5 received when the original inspection report or other notice has been personally
6 served on the Person in Charge or sent by registered or certified mail to the last
7 known address of the Permit Holder.

8 (D) *Suspension.* Permits may be suspended for failure of the Holder to
9 comply with the requirements of this article or other applicable laws, ordinances
10 or regulations. The suspension may be lifted when the ~~[Mayor]~~[Mayor's
11 designee] determines the violations have been corrected.

12 (E) *Revocation.* Permits may be revoked for serious or repeated violations of
13 the requirements of this article, or for violation of other applicable laws,
14 ordinances or regulations. A Permit revocation is permanent and a second
15 Permit of any kind will not be granted to the previous Holder or any Person in
16 privity with the previous Holder. The Permit shall be surrendered to the
17 ~~[Mayor]~~[Mayor's designee] upon suspension or revocation.

18 [(F) *Civil Fine.* The Mayor's designee may impose a civil fine of \$200 for a first
19 violation of this article, \$300 for a second violation of this article and \$500 for a
20 third or subsequent violation of this article. Notice of the civil fine shall be
21 appealable under the administrative appeal procedures of this article. Failure to
22 pay the fine, appeal the fine, or prevail at an administrative hearing challenging
23 the fine shall allow the Mayor's designee to place a lien upon any asset owned
24 by the Permit Holder. The Mayor's designee may also collect on the fine through
25 any other method allowed by law.]

26 (~~[G]~~[F]) *Reinspection.* A Person whose Permit has been suspended may
27 apply for an inspection of the premises for the purpose of reinstating the Permit
28 by filing an additional application for a Permit at AACC on the form provided by
29 the ~~[Mayor]~~[Mayor's designee]. Within five working days after AACC receives
30 the application, the ~~[Mayor]~~[Mayor's designee] shall make an inspection. If the
31 applicant and the site are in compliance with the requirements of this article and
32 all other applicable laws, regulations, and ordinances, the Permit shall be

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1 reinstated. The reinstated Permit shall expire on the date of expiration of the
2 previously suspended permit.

3 ~~(H)~~(G) *Revocation of Exotic or Wild Animal Permit.* If an Exotic or Wild
4 Animal Permit is suspended or revoked, all Animals received, purchased,
5 owned or kept under the authority of the Permit shall be surrendered to the
6 ~~Mayor~~Mayor's designee for Impoundment as provided in the Impoundment
7 section of this article. After a period of at least seven days, if the violations of
8 the article which resulted in suspension or revocation of the Permit have not
9 been corrected, the ~~Mayor~~Mayor's designee may sell or dispose of the
10 Animal(s) in a humane manner.

11 ~~(I)~~(H) *Appeal.* A Person [who has been assessed a civil fine or]whose
12 application for a Permit or Permit renewal has been approved on condition or
13 denied, and a Permit Holder whose Permit has been suspended or revoked, may
14 submit to the ~~Mayor~~City Clerk a written request for a hearing, provided that
15 the written request is received ~~at AAGC~~by the City Clerk within ~~five~~15 days
16 of the applicant's receipt of the written notice of denial[,] ~~or~~ conditional
17 approval or civil fine. The hearing shall be conducted ~~within a reasonable~~
18 time ~~in accordance with the provisions in the IHO Ordinance, ROA 1994,~~
19 Chapter 2, Article 7, Part 8.

20 ~~(I) Hearing.~~ Hearings shall be conducted by the Mayor at a time and a place
21 designated by the Mayor and shall be recorded. All witnesses shall be sworn or
22 affirmed. Written notice of the time, date and place of the hearing shall be mailed
23 to the applicant and the Mayor.]

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

32 (K) *Recording.* The hearing shall be recorded by audio method, but need not
33 be transcribed unless a written transcript is requested, in which case the cost

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[Bracketed/Strikethrough Material] - Deletion

1 of transcription shall be borne by the party requesting transcription. If one party
2 prefers to have the hearing transcribed by a court reporter, that party shall pay
3 all directly related costs, and the party requesting transcription shall pay the
4 cost of transcription.

5 (L) *Decision.* The Hearing Officer shall prepare a written report of his findings
6 and decision within ten days after the hearing and shall provide copies to the
7 parties.[Following a hearing, the respondent may appeal the decision of the
8 Hearing Officer to the District Court within 30 days of the decision.]

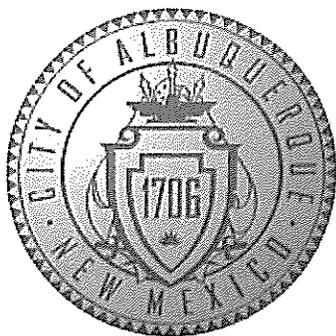
9 (M) *Fee.* A nonrefundable hearing fee of \$50 shall accompany the appeal to
10 the ~~[Mayer]~~[City Clerk] filed pursuant to this section.

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

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

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

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CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

February 27, 2023

TO: Patrick Davis, City Council

FROM: Timothy M. Keller, Mayor

A handwritten signature in black ink, appearing to be 'TK', is written over the name 'Timothy M. Keller' in the 'FROM' field.

SUBJECT: AMENDING THE NUISANCE ABATEMENT ORDINANCE CHAPTER 11, ARTICLE 1 OF THE REVISED ORDINANCES OF ALBUQUERQUE, AMENDING DEFINITIONS AND PENALTIES; AMENDING THE ALBUQUERQUE WEED AND ANTI-LITTER ORDINANCE, CHAPTER 9, ARTICLE 8 OF THE REVISED ORDINANCES OF ALBUQUERQUE, AMENDING DEFINITIONS AND PENALTIES, AND APPEAL PROCEDURE FOR ADMINISTRATIVE HEARINGS; AMENDING THE "HEART" ORDINANCE CHAPTER 9, ARTICLE 2, AMENDING DEFINITIONS, THE HEARING PROCESS, ADDING A CIVIL FINE.

The attached is a request to amend the Nuisance Abatement, Anti-Weed and Litter, and HEART Ordinances to (1) expand the definition of Public Nuisance to include additional violations, (2) provide for civil penalties and fines, and (3) provide for hearing and administrative appeals processes. These provisions will enhance the City's ability to enforce nuisance abatement.

I am submitting these amendments to City Council for their consideration and action.

TITLE/SUBJECT OF LITIGATION*** *Same as subject line on last page)*

Approved:



Lawrence Rael Date
Chief Administrative Officer

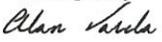
Approved as to Legal Form:

DocuSigned by:
 3/1/2023 | 2:24 PM MST

1A21D96D32C74EE...

Date
City Attorney

Recommended:

DocuSigned by:
 3/1/2023 | 1:25 PM MST

847D88B6EF46443...

Date
Director

Cover Analysis

1. What is it?

This legislation amends the Nuisance Abatement Ordinance, the Weed and Litter Ordinance, and the HEART Ordinance.

2. What will this piece of legislation do?

The legislation amends definitions, including expanding the definition of Public Nuisance, adds civil fines, and amends the hearing and administrative appeals processes.

3. Why is this project needed?

These changes are needed to improve enforcement of nuisance abatement through a civil penalty process in addition to the existing criminal penalties.

4. How much will it cost and what is the funding source?

No costs anticipated over existing appropriations.

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

\$250,000 in revenue related to proposed civil fines in the HEART Ordinance is projected for the Animal Welfare Department.

6. What will happen if the project is not approved?

The City will remain restricted to criminal penalties for all three ordinances.

7. Is this service already provided by another entity?

No.

FISCAL IMPACT ANALYSIS

TITLE: Nuisance Abatement R: O:
 FUND: 110
 4919000

- No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

| | 2023 | Fiscal Years | | Total |
|---|-------------|--------------|-------------|-------------|
| | | 2024 | 2025 | |
| Base Salary/Wages | | | | - |
| Fringe Benefits at | - | - | - | - |
| Subtotal Personnel | - | - | - | - |
| Operating Expenses | | | | |
| Property | | | - | - |
| Indirect Costs | - | | | - |
| Total Expenses | \$ - | \$ - | \$ - | \$ - |
| <input checked="" type="checkbox"/> Estimated revenues not affected | | | | |
| <input type="checkbox"/> Estimated revenue impact | | | | |
| Amount of Grant | | | | - |
| City Cash Match | - | - | - | - |
| City Inkind Match | | | | - |
| City IDOH *15.30 | - | | | - |
| Total Revenue | \$ - | \$ - | \$ - | \$ - |

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

Number of Positions created

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

The purpose of this ordinance is to prevent the use of property as a public nuisance.

PREPARED BY:

APPROVED:

Debbie Dombroski 2.27.2023
 FISCAL MANAGER (date)

Alan Laska
 DIRECTOR (date) 3/1/2023 | 1:25 PM MST
 947D8BB6EF4C443

REVIEWED BY:

Haiyan Zhao 3/1/2023 | 1:49 PM MST
 EXECUTIVE BUDGET ANALYST (date)

Lauren L. Davis 3/1/2023 | 1:52 PM MST
 BUDGET OFFICER (date)

Christine Boerner 3/1/2023 | 1:53 PM MST
 CITY ECONOMIST (date)

FISCAL IMPACT ANALYSIS

TITLE: Albuquerque Weed and Anti-litter Ordinance R: O:
 FUND: 110
 4919000

- No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

| | Fiscal Years | | | Total |
|---|--------------|------|------|-------|
| | 2023 | 2024 | 2025 | |
| Base Salary/Wages | | | | - |
| Fringe Benefits at | - | - | - | - |
| Subtotal Personnel | - | - | - | - |
| Operating Expenses | | | | |
| Property | | | - | - |
| Indirect Costs | - | | | - |
| Total Expenses | \$ - | \$ - | \$ - | \$ - |
| <input checked="" type="checkbox"/> Estimated revenues not affected | | | | |
| <input type="checkbox"/> Estimated revenue impact | | | | |
| Amount of Grant | | | | - |
| City Cash Match | - | - | - | - |
| City Inkind Match | | | | - |
| City IDOH *15.30 | - | | | - |
| Total Revenue | \$ - | \$ - | \$ - | \$ - |

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

Number of Positions created 0

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

This legislation is intended to promote the general health, safety and welfare of the people of the city by prohibiting the maintenance or accumulation of those plants determined to be of major allergenic significance, or which constitute a fire hazard when wind collected, or which otherwise present a hazard or nuisance to inhabitants of the city. This article is also intended to promote the general health, safety and welfare of the people of the city by prohibiting the throwing, depositing or accumulation of litter in public places.

PREPARED BY: APPROVED:

Debbie Dombroski 2.27.2023
 FISCAL MANAGER (date)

[Signature] 2/28/2023
 DIRECTOR (date)

REVIEWED BY:

[Signature] 3/1/23 EXECUTIVE BUDGET ANALYST (date) [Signature] 3/1/23 BUDGET OFFICER (date) [Signature] 3/1/23 CITY ECONOMIST (date)

FISCAL IMPACT ANALYSIS

TITLE: Proposed HEART Ordinance Amendments

R: O:
 FUND: ~~243~~ 110
 DEPT: 1010000

- No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

| | | 2023 | Fiscal Year 2024 | 2025 | Total |
|-------------------------------------|-------|-------------|---------------------|-------------|-------------------|
| Base Salary/Wages | | | | | - |
| Fringe Benefits at | 1.45% | - | - | - | - |
| Subtotal Personnel | | - | - | - | - |
| Operating Expenses | | - | - | - | - |
| Supplies | | - | - | - | - |
| Indirect Costs | | - | - | - | - |
| Total Expenses | | \$ - | \$ - | \$ - | \$ - |
| [] Estimated revenues not affected | | | | | - |
| [x] Estimated revenue impact | | | | | - |
| Revenue -Fund 243 | | | 100,000 | | 100,000 |
| Amount of Grant | | - | | | - |
| City Cash Match | | | | | - |
| City Inkind Match | | | | | - |
| City IDOH | | | | | - |
| Total Revenue | | \$ - | \$ 100,000 | \$ - | \$ 100,000 |

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

Number of Positions created 0

COMMENTS:

Proposed revenue HEART Ordinance Amendments for Civil Fines.

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

PREPARED BY:

APPROVED:


 Erica J. Garcia, Fiscal Manager


 Carolyn A. Ortega, Director (date) 3/1/23

REVIEWED BY:


 EXECUTIVE BUDGET ANALYST (date) 3/1/2023


 Budget Officer 3/1/23


 CITY ECONOMIST 3/1/23