



City of Albuquerque

Office of the City Clerk

Timothy M. Keller, Mayor

Ethan Watson, City Clerk

Interoffice Memorandum

August 12, 2022

To: CITY COUNCIL

From: Camille Chavez, Assistant City Clerk *cc*

Subject: BILL NO. O-22-31; ENACTMENT NO. O-2022-031

I hereby certify that on August 12, 2022, the Office of the City Clerk received Bill No. O-22-31 as signed by the president of the City Council, Isaac Benton. Enactment No. O-2022-031 was passed at the August 1, 2022 City Council meeting. Mayor Keller did not sign the approved Ordinance within the 10 days allowed for his signature and did not exercise his veto power. Pursuant to the Albuquerque City Charter Article XI, Section 3, this Ordinance is in full effect beginning August 19, 2022 without Mayor's approval or signature. This memorandum shall be placed in the permanent file for Bill No. O-22-31.

Sincerely,

Ethan Watson *EW*

Ethan Watson
City Clerk

CITY of ALBUQUERQUE

TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-31 ENACTMENT NO. 0-2022-031

SPONSORED BY: Tammy Fiebelkorn

1 ORDINANCE

2 ADDING A NEW SECTION TO THE CRIMINAL CODE (CHAPTER 12, ARTICLE 2,
3 ROA 1994) TO PROHIBIT THE UNAUTHORIZED PRESENCE AND CAMPING IN
4 WATER CONVEYANCE SYSTEMS.

5 WHEREAS, fast moving waters presents a public safety hazard that is
6 mitigated through a combination of strategies, the foremost of which, is the
7 development of water conveyance systems, such as arroyos, engineered
8 channels, ditches, storm drains and piping that collect and transport waters;
9 and

10 WHEREAS, these conveyance systems are subject to periods of fast
11 flowing water that have the hydraulic power to overwhelm and carry away
12 persons or objects that are present in the conveyance systems when the water
13 flows occur; and

14 WHEREAS, in recent years, within the City of Albuquerque, persons have
15 been loitering and camping in these conveyance systems, and annually, a
16 number of these persons are swept away and drowned in these waters. Their
17 presence has also impeded the ability of agencies to maintain these facilities
18 in safe working conditions; and

19 WHEREAS, to provide for public safety there is subsequently a need to
20 restrict access to these conveyance systems to only those persons with
21 official business.

22 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
23 ALBUQUERQUE:

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1 SECTION 1. A new Section 12-2-30 is hereby added to the Criminal Code,
2 Chapter 12, Article 2 of the Revised Ordinances of Albuquerque, 1994, as
3 follows:

4 §12-2-30 UNAUTHORIZED PRESENCE AND CAMPING IN DRAINAGE
5 CHANNELS, ARROYOS AND IRRIGATION CHANNELS.

6 (A) *Definitions.* For purposes of this section, the following definitions shall
7 apply unless the context clearly indicates or requires a different meaning:

8 *Arroyo.* A natural or naturalistic water course formed by the action of fast-
9 flowing water that is owned and maintained by a public agency.

10 *Camping.* The setting up of any tent, shack, or other permanent or
11 temporary structure or shelter, or preparing a sleeping bag or other bedding
12 material for use in a water conveyance system.

13 *Drainage channel or piping.* Engineered structures designed to convey
14 water flow that is owned, maintained or under the authority of a public agency,
15 and that may consist of earthen, concrete, metal, rock, brick and/or heavy-duty
16 plastic or other materials.

17 *Irrigation channel.* An engineered waterway structure, used for the
18 purpose of carrying water from a source to soil used for farming or
19 landscaping that is owned, maintained or under the authority of a public
20 agency, and that may consist of earthen, concrete, metal, rock, brick and/or
21 heavy-duty plastic or other materials.

22 *Public agency.* The City of Albuquerque, the County of Bernalillo, the
23 Albuquerque Metropolitan Arroyo Flood Control Authority, or the Middle Rio
24 Grande Conservancy District.

25 *Right of way.* The right of way includes all land within the parameters of
26 the area within which the public agency owns, operates or maintains the
27 drainage channel, arroyo, irrigation channel or piping, and is not restricted to
28 the drainage channel, arroyo, irrigation channel, or piping.

29 *Water Conveyance System.* An engineered or natural channel intended to
30 transport water, including an arroyo, drainage channel, irrigation channel, and
31 piping.

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- 1 (B) It is unlawful for any person to enter or to remain in a water conveyance
2 system which is owned, maintained or operated by a public agency and
3 which is not designated as an open space area or recreational path,
4 except for public safety personnel and employees of the public agency
5 that owns, maintains or operates said water conveyance system, or those
6 persons authorized by such agency.
- 7 (C) It is unlawful for any person to camp or loiter upon any part of the right of
8 way in which a water conveyance system owned, maintained or operated
9 by a public agency is located, including any portion of such right of way
10 designated as "Open Space."
- 11 (D) It is unlawful for any person to remain in an open space or recreational
12 trail that is within the right of way of a water conveyance channel after
13 having been instructed to leave by an employee of the public agency that
14 controls the water conveyance system, their designated representative,
15 or a law enforcement official, due to a public safety issue or to allow the
16 agency to conduct facility maintenance.
- 17 (E) It is unlawful for any person to operate a motor vehicle or an off highway
18 vehicle in the right of way of a water conveyance system, that is owned,
19 maintained or operated by a public agency, including any water
20 conveyance system designated as "Open Space" or as a recreation trail,
21 except for public safety personnel and employees of the public agency
22 that owns, maintains or operates said water conveyance system, or those
23 persons authorized by such agency.
- 24 (F) The penalties set forth in § 12-1-99 shall apply for a violation of this
25 section; provided, however, that a law enforcement officer, shall first
26 verify that a written warning has been issued, otherwise, the officer shall
27 issue a Criminal Trespass Notification to a person for violating this
28 section prior to the issuing of a citation or conducting an arrest. However,
29 in the event of an immediate danger, a verbal warning prior to a citation or
30 arrest is permitted.

31 SECTION 2. SEVERABILITY. If any section, paragraph, sentence, clause,
32 word, or phrase of this Ordinance is for any reason held to be invalid or

unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word, or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

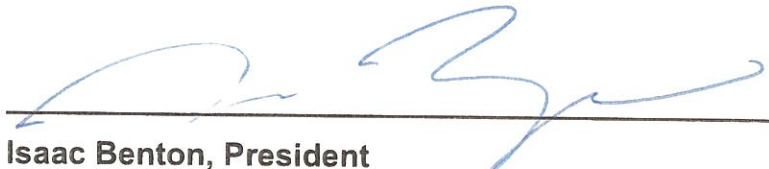
SECTION 3. COMPILATION. Section 1 of this Ordinance shall amend, be incorporated in, and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994, as a new Section 12-2-30 to be added to Article 2, Chapter 12 and titled "Unauthorized Presence and Camping in Water Conveyance Channels."

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect five days after publication by title and general summary.

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1 PASSED AND ADOPTED THIS 1st DAY OF August, 2022
2 BY A VOTE OF: 8 FOR 1 AGAINST.

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4 For: Bassan, Benton, Davis, Fiebelkorn, Grout, Jones, Lewis, Sanchez
5 Against: Peña
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10 
11 Isaac Benton, President
12 City Council
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15 APPROVED THIS _____ DAY OF _____, 2022
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18 Bill No. O-22-31
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23 _____
24 Timothy M. Keller, Mayor
25 City of Albuquerque
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28 ATTEST:

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31 Ethan Watson, City Clerk
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