

CITY of ALBUQUERQUE

TWENTY SIXTH COUNCIL

COUNCIL BILL NO. O-24-63 ENACTMENT NO. _____

SPONSORED BY: Renée Grout, by request

1 **ORDINANCE**

2 **REPEALING CHAPTER 11, ARTICLE 1, PARTS 1 AND 2 RELATED TO**
3 **NUISANCE ABATEMENT AND REPLACING IT WITH A NEW NUISANCE**
4 **ABATEMENT ORDINANCE.**

5 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
6 **ALBUQUERQUE:**

7 **SECTION 1. REPEAL.** Chapter 11, Article 1, Parts 1 and 2 ROA 1994 is
8 hereby repealed in its entirety.

9 **SECTION 2. NEW MATERIAL.** Chapter 11, Article 11 is hereby added to read
10 as follows:

11 **“PART 1: NUISANCE ABATEMENT.**

12 **SUBPART A: GENERAL PROVISIONS.**

13 **§ 11-1-1-1 SHORT TITLE.** Sections 11-1-1-1 et seq., ROA 1994, may be cited as
14 the “Nuisance Abatement Ordinance.”

15 **§ 11-1-1-2 INTENT.** The purpose of this Ordinance is to prevent the use of
16 property as a public nuisance and to establish procedures to eliminate and
17 abate nuisances.

18 **§ 11-1-1-3 DEFINITIONS.** For the purposes of this Ordinance, the following
19 definitions shall apply unless the context clearly indicates or requires a
20 different meaning.

21 **ABATE.** To bring to a halt, eliminate or, where that is not possible or feasible,
22 to suppress, reduce, and minimize.

23 **BUILDING.** A structure, as defined herein, which is enclosed with walls and a
24 roof so that there are no sides left open.

25 **CLOSE, TO CLOSE, or CLOSURE.** To remove all owners, tenants, occupants
26 and other persons and animals from the real property, vehicle, or personal
27 property, or a specified discrete portion thereof, and to lock, board, bar, or

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- 1 otherwise close and prohibit all entry, access, and use of the real property,
2 vehicle, or other personal property, or a specified discrete portion thereof,
3 except such access and use as may be necessary for purposes of inventory,
4 maintenance, storage, security, and other purposes.
- 5 **CRIME PREVENTION STANDARDS.** Standards established by the Mayor's
6 designee for the design, management and operation of a property or business
7 that aim to prevent criminal activity.
- 8 **IMMINENT HAZARD.** A situation that demands unusual or immediate action
9 and which requires the City to circumvent usual procedures and warrant
10 requirements in order to protect a person's health, safety, and life from harm.
- 11 **LEGAL OR EQUITABLE INTEREST OR RIGHT OF POSSESSION.** Every legal or
12 equitable interest, title, estate, tenancy, or right of possession recognized by
13 law and equity, including freeholds, life estates, future interests, condominium
14 rights, time-share rights, leaseholds, easements, licenses, liens, deeds of
15 trust, contractual rights, mortgages, security interests, and any right or
16 obligation to manage or act as agent or trustee for any person holding any of
17 the foregoing.
- 18 **MAYOR'S DESIGNEE.** The person(s) or entity(ies) appointed by the Mayor to
19 enforce this ordinance.
- 20 **PARCEL.** Any lot or other unit of real property or any combination of
21 contiguous lots or units owned by the same person as defined herein.
- 22 **PERSON.** Natural persons and every legal entity whatsoever, including sole
23 proprietors, corporations, limited liability companies, partnerships, limited
24 partnerships, and associations.
- 25 **PUBLIC NUISANCE.** Any acts or omissions that adversely affect public health,
26 welfare, or safety. Acts or omissions that may be deemed a public nuisance
27 include, but are not limited to, the following:
- 28 (1) Any criminal activity on three or more occasions within a
29 three-month period, if the City has issued citations or arrests documenting
30 that the criminal activity has occurred on three prior occasions;
- 31 (2) The failure to secure the doorways or window openings of any
32 building or structure to prevent the entry of unauthorized persons, where such

1 failure leads to repeat activity that adversely affects public health, welfare or
2 safety;

3 (3) Three or more violations of the following City ordinances
4 within a three-month period:

5 (a) Noise Control Ordinance, § 9-9-4 or 9-9-7 ROA
6 1994;

7 (b) Food Sanitation Ordinance, § 9-6-1-1 to § 9-6-1-99
8 ROA 1994;

9 (c) Humane and Ethical Animal Rules and Treatment
10 (HEART) Ordinance, § 9-2-2-2 ROA 1994, Housing and Restraint
11 Standards for Mammals and Birds Kept on Residential Property;

12 (d) Humane and Ethical Animal Rules and Treatment
13 (HEART) Ordinance, § 9-2-4-7 ROA 1994, Animal Noise;

14 (e) Humane and Ethical Animal Rules and Treatment
15 (HEART) Ordinance, § 9-2-4-8 ROA 1994, Animal Fights;

16 (f) Albuquerque Insect and Rodent Control
17 Ordinance, § 9-7-1 to § 9-7-99 ROA 1994;

18 (g) Uniform Housing Code, § 14-3-1-1 to § 14-3-5-99 ROA
19 1994; or

20 (h) Fire Code, § 14-2-1 ROA 1994.

21 (4) Any acts or omissions that would be deemed a public
22 nuisance under common law.

23 REAL PROPERTY. Land and all improvements, buildings, and structures, and
24 all estates rights and interests, legal and equitable, in the same, including all
25 forms of ownership and title, future interests, condominium rights, time-share
26 rights, easements, water rights, mineral rights, oil and gas rights, space rights,
27 and air rights.

28 RELOCATION COSTS. The expenses reasonably incurred by a resident
29 displaced from a residential building pursuant to action of the City of
30 Albuquerque. Relocation costs shall be \$2,000 per family unless the resident
31 can demonstrate special circumstances that make the relocation cost a
32 greater amount. If special circumstances are demonstrated, relocation costs
33 may include the actual cost of physically moving to a residential building

1 approved by the relocation agency (the “replacement unit”); costs of moving
2 to a location outside of the immediate area; any security/damage deposit
3 required by the replacement unit owner which exceed the amount of the
4 security/damage deposit recovered from the owner of the building the resident
5 is moving from; utility deposits and hook up cost and the rent for the first
6 month; costs of moving back to the residential building originally vacated
7 after housing code compliance; and any other reasonable relocation costs.
8 **RENTAL AGREEMENT.** Any written or oral agreement allowing occupancy of a
9 residential building by a resident.
10 **RESIDENT.** One or more people entitled under a rental agreement to occupy
11 all or a portion of a residential building to the exclusion of others and who
12 actually reside(s) at such location.
13 **RESIDENTIAL BUILDING.** A building or portion thereof designed or used for
14 human habitation.
15 **STRUCTURE.** Anything constructed, erected, or placed upon real property
16 which is so firmly attached to the land as to be reasonably considered part of
17 the real estate, and includes buildings of every type and nature whatsoever.
18 **TENANT.** Any person who uses, resides in, or occupies property identified as
19 a public nuisance, regardless of whether the tenant has the consent of the
20 owner to use, reside, or occupy the property.
21 **VEHICLE.** Every device in, upon or by which any person or property is or may
22 be transported or drawn upon a highway, including any frame, chassis or
23 body of any vehicle or motor vehicle, except devices moved exclusively by
24 human power or used exclusively upon stationary rails or tracks.
25 **§ 11-1-1-4 ADMINISTRATION.** The Mayor or Mayor’s designee shall be
26 responsible for the administration of this article and may promulgate
27 reasonable rules and regulations to carry out the intent and purpose of this
28 article.
29 **§ 11-1-1-5 SEVERABILITY.** If any section, paragraph, sentence, clause, word or
30 phrase of §§ 11-1-1-1 et seq. is for any reason held to be invalid or
31 unenforceable by any court of competent jurisdiction, such decision shall not
32 affect the validity of the remaining provisions of §§ 11-1-1-1 et seq. The
33 Council hereby declares that it would have passed §§ 11-1-1-1 et seq. and

1 each section, paragraph, sentence, clause, word or phrase thereof irrespective
2 of any provision being declared unconstitutional or otherwise invalid.

3 **SUBPART B:**

4 **CRIMINAL ABATEMENT OF PUBLIC NUISANCE OFFENSES.**

5 **§ 11-1-1-6 PUBLIC NUISANCES PROHIBITED.**

6 (A) It shall be unlawful for any person to engage in activities that
7 constitute a public nuisance or to intentionally, knowingly, recklessly, or
8 negligently commit, conduct, promote, facilitate, permit, fail to prevent, or
9 otherwise allow, any public nuisance in, on or using any property in which
10 they hold any legal or equitable interest or right of possession.

11 (B) A person shall not be deemed to have violated this ordinance if they
12 are the victim, rather than the perpetrator, or any criminal activity that forms
13 the basis of the nuisance determination, or if they are merely present when
14 nuisance activity occurs.

15 (C) An owner of property whose own activities on the real property are
16 not a nuisance shall not be in violation of this ordinance if the owner has no
17 knowledge of the public nuisance activity and, within a reasonable time after
18 receiving notice of the activity constituting a nuisance, the owner:

19 (1) Demonstrates to the City that the rental agreement for the
20 property contains a provision prohibiting criminal activity and other nuisance
21 activity;

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

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

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

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

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

10 (D) A person shall not be deemed to have violated this ordinance if the
11 nuisance determination is based solely on incidents of domestic violence and
12 the person is determined to be the victim in those incidents.

13 **§ 11-1-1-7 PENALTIES FOR PUBLIC NUISANCE VIOLATIONS.**

14 (A) Any person found to have engaged in unlawful activity, as
15 established in Section 11-1-1-6(A) shall, upon conviction, be subject to a fine
16 not exceeding \$500 or by imprisonment not exceeding 90 days or both. Each
17 separate violation shall constitute a separate offense and every day on which
18 any violation exists shall constitute a separate violation and offense.

19 (B) Upon conviction of violation of this ordinance, the City shall register
20 the violating property with the appropriate City agencies and/or the Bernalillo
21 County Clerk.

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

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

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

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

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

30 (E) Additional and alternative remedies. In addition or in the alternative
31 to the criminal fines, sentences, conditions of suspended sentences,
32 publication, posting, press and media releases, and other sanctions provided
33 above, the City may also seek administrative remedies against any license and

1 the civil remedies provided in this Ordinance. These remedies shall be
2 cumulative, and the City may pursue one or more of them, simultaneously or
3 in succession.

4 **SUBPART C:**

5 **CIVIL ABATEMENT OF PUBLIC NUISANCE OFFENSES.**

6 **§ 11-1-1-8 INTENT.**

7 (A) The abatement of public nuisances for the protection of public
8 health, safety, and welfare is a matter of local concern. The purpose of this
9 subpart is not to punish, but to abate public nuisances. The actions provided
10 in this subpart are designed to abate public nuisances by removing the
11 property from criminal use and as a base of criminal operations, to make
12 property owners vigilant in preventing public nuisances on, in, or using their
13 property and responsible for the lawful use of their property by tenants,
14 guests and occupants, and to deter public nuisances. The remedies provided
15 in this subpart are directed at the property involved without regard to
16 ownership, title or right of possession and the culpability or innocence of
17 those who hold these rights. The remedial actions provided in this subpart are
18 intended to be civil in nature.

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

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

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

31 (E) The remedies provided in Subpart C of this Ordinance are cumulative
32 and supplementary to the criminal penalties provided in Subpart B of this
33 Ordinance, the criminal remedies provided by any other criminal ordinance or

statute, other civil remedies, and any administrative proceedings to revoke, suspend, fine, or take other action against any license. The City may pursue the remedies provided in Subpart C of this Ordinance, the criminal penalties provided in Subpart B of this Ordinance or other ordinances or statutes, other civil actions or remedies, administrative proceedings against a license, or any one or more of them, and may do so simultaneously or in succession.

§ 11-1-1-9 CIVIL FINES.

(A) In addition to any other remedies available in this Ordinance or under the common law, the Mayor's designee may impose a civil fine of \$500 per day based on a determination that a person has engaged in activity that constitutes a public nuisance, as defined herein, provided that a daily \$500 fine shall only be imposed in the case of an imminent hazard.

(B) When the Mayor's designee imposes a civil fine for violations of this article occurring on real property, the Mayor's designee shall issue notice directed to the owner of the subject property, their agent and/or responsible person, and, where appropriate, to the occupant of the subject property, as shown on the records of the Bernalillo County Clerk and/or the Bernalillo County Assessor's Office. The notice shall contain:

(1) The street address and a legal description of the subject property;

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

(3) A concise description of the conditions found to render the subject property a public nuisance under the provisions of this code;

(4) The amount of the fine assessed;

(5) A statement that the fine must be paid in full within 30 days of the date of the order or a lien may be placed upon the subject property or any asset owned by the subject property's owner and that the City may seek remedies, including foreclosure, for any unpaid liens;

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

(7) A statement that payment plans or waivers may be available if the person can demonstrate hardship, low income or indigent status; and

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

7 (C) METHOD OF SERVICE.

8 (1) Service of the Notice shall be made upon all persons entitled
9 thereto either personally or by mailing a copy of such notice and order by
10 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
18 affect the validity of any proceedings taken under this section. Service by
19 certified mail in the manner herein provided shall be effective on the date of
20 mailing.

21 (D) APPEAL. Any individual who has been assessed a civil fine issued
22 pursuant to this article may appeal that decision. The request for appeal and
23 the hearing shall comply with the procedures outlined in the Independent
24 Office of Hearings Ordinance, ROA 1994, §§ 2-7-8-1 to 2-7-8-9.

25 § 11-1-1-10 ADMINISTRATIVE PROCEDURES FOR THE ABATEMENT OF
26 NUISANCES.

27 (A) In addition to any other remedies available in this Ordinance or
28 under the common law, the Mayor's designee may request an administrative
29 hearing in order to obtain additional remedies needed to abate a public
30 nuisance occurring on real property. The action may be brought against the
31 property where the nuisance has occurred, any persons owning or claiming
32 any legal or equitable interest or right of possession in the property, all
33 tenants and occupants at the property, managers and agents for any persons

1 owning or claiming a legal or equitable interest in the property, any persons
2 committing, conducting, promoting, facilitating or aiding the commission of a
3 public nuisance, and any other persons whose involvement may be necessary
4 to abate the nuisance, prevent it from recurring.

5 (B) To initiate an abatement action, the Mayor's designee shall issue a
6 Notice of Public Nuisance and Intent to Cause Abatement to the property
7 owner or other responsible person of the nuisance violation(s) occurring on or
8 near the property in accordance with the procedures identified in ROA § 11-1-
9 1-9(B).

10 (1) The notice shall identify the nuisance and the date of the
11 occurrence and include a statement that if the nuisance is not abated within
12 fifteen (15) days, the City will request an administrative hearing.

13 (2) The Mayor's designee shall mail the notice by certified mail,
14 postage prepaid, return receipt requested, to the owner(s) of the real property
15 and post the notice at the main entrances to the buildings or at some other
16 prominent place on the real property. The mailing of the notice shall be
17 deemed sufficient if mailed to the owner(s) and the holder(s) of the last
18 recorded deed of trust at the address(es) shown on the records of the
19 Bernalillo County Clerk and/or the Bernalillo County Assessor's Office.

20 (3) The notice shall include instructions in the top five non-
21 English languages spoken in Albuquerque on how to obtain additional
22 information and/or language services.

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

26 (5) The Mayor's designee shall not be required to mail any notice
27 whenever he or she determines that any of the following conditions exist:

28 (a) The public nuisance poses an imminent hazard;

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

32 (c) Other emergency circumstances exist.

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

3 (C) After providing the notice required in § 11-1-1-10(B), the Mayor's
4 designee may request an administrative hearing before the Independent
5 Hearing Office ("IHO"), which shall have authority to determine whether a
6 public nuisance exists, order abatement of the nuisance, and impose fines or
7 other penalties. The hearing shall be conducted in accordance with the
8 provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8 and
9 pursuant to the New Mexico Rules of Civil Procedure.

10 (D) If the Hearing Officer determines that a violation of this Ordinance
11 has occurred, the Hearing Officer shall determine the remedies to be imposed.
12 The Hearing Officer may order any responsible individuals to:

13 (a) Cease the activity causing the public nuisance;
14 (b) Abate the nuisance;
15 (c) Enter into a nuisance abatement agreement with
16 the City;

17 (d) Permit the City to inspect the property to
18 determine compliance;

19 (e) Close the business or building for a period of time
20 not to exceed thirty (30) days; and

21 (f) Pay a civil fine not to exceed \$500 per violation
22 per day.

23 (E) The Order shall state the determination of the Hearing Officer
24 regarding the alleged violations listed in the notice of administrative civil
25 enforcement and shall contain findings of fact and conclusions of law.

26 (F) Any party aggrieved by a final decision of the Hearing Officer may
27 appeal the decision to District Court within 30 days of the final order.

28 (G) The Mayor's Designee shall monitor compliance with the order. If the
29 Mayor's designee has reason to believe that any individual subject to the
30 order is not complying with the order, the Mayor's designee may seek further
31 relief before the IHO, commence a civil action in District Court, or refer the
32 matter to the District Attorney for the commencement of criminal proceedings.

1 (H) The IHO may retain jurisdiction to rescind or modify orders issued
2 pursuant to this section.

3 (I) Transfer of property ownership shall not terminate any order issued
4 pursuant to this section. An acquiring property owner shall be responsible for
5 compliance with any order or pending enforcement action against a nuisance
6 property or its prior owner.

7 § 11-1-1-11 CIVIL ACTIONS.

8 (A) In addition to any other remedies available in this Ordinance or
9 under the common law, the City may pursue a civil action to obtain any relief
10 necessary to abate a nuisance.

11 (B) Civil actions brought under this Ordinance shall be filed by the City
12 Attorney for the City of Albuquerque. A private citizen, in the name of the
13 state, may also bring an action under this Ordinance.

14 (C) A civil action brought under this Ordinance shall be commenced by
15 the filing of a verified complaint or a complaint verified by an affidavit and a
16 motion for temporary restraining order in accordance with the New Mexico
17 Rules of Civil Procedure.

18 (D) The defendants to a civil action under this Ordinance and the
19 persons liable for the remedies in this section may include the property itself,
20 any persons owning or claiming any legal or equitable interest or right of
21 possession in the property, all tenants and occupants at the property,
22 managers and agents for any persons owning or claiming a legal or equitable
23 interest in the property, any persons committing, conducting, promoting,
24 facilitating or aiding the commission of or flight from a public nuisance, and
25 any other persons whose involvement may be necessary to abate the
26 nuisance, prevent it from recurring, or to carry into effect the court's orders
27 for temporary restraining orders, closures, receiverships, permanent
28 injunctions, liens, sales and destruction. Any person holding any legal or
29 equitable interest or right of possession in the property who has not been
30 named as a defendant may intervene as a defendant.

31 (E) Notification before filing civil action or imposing civil fine.

32 (1) At least ten (10) calendar days before filing a civil action under
33 this Ordinance involving any closure or receivership of real property or

1 imposing a civil fine, the Mayor's designee shall post a notice at the main
2 entrances to the buildings or at some other prominent place on the real
3 property. The Mayor's designee shall also mail a notice by certified mail,
4 return receipt requested, to the owner(s) of the real property and to the
5 holder(s) of the last deed of trust recorded on the real property. The mailing of
6 the notice shall be deemed sufficient if mailed to the owner(s) and the
7 holder(s) of the last recorded deed of trust at the address(es) shown on the
8 records of the Bernalillo County Clerk and/or the Bernalillo County Assessor's
9 Office. The posted and mailed notices shall state that the real property has
10 been identified as a public nuisance and that a civil action under this
11 Ordinance may be filed and a civil fine may be imposed. All notices shall
12 include instructions in the top five non-English languages spoken in
13 Albuquerque on how to obtain additional information and/or language
14 services.

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

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

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

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

1 **§ 11-1-1-12 RELOCATION.**

2 **(A) Whenever a civil action is filed that involves a building occupied by a**
3 **resident the following shall apply:**

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

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

31 **(3) At the time that a notice is served on the owner of the**
32 **property, a notice in substantially the following form shall be served on those**
33 **residents known by name to the Mayor’s designee. Such notice shall be**

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

8 **NOTICE TO RESIDENTS**

9 **YOU MAY BE REQUIRED TO MOVE**

10 **IF YOU MUST MOVE YOU MAY BE ENTITLED TO MONEY**

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

14 The Court may order the building to be closed.

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

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

22 **Phone Number:**

23 **Address:**

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

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

1 i. The residents had a rental agreement at the time the notice
2 was served on the residents;

3 ii. A court had issued an eviction order to the residents prior to
4 the date the notice was served on the residents;

5 iii. The residents caused or substantially contributed to the
6 conditions that were the basis of the notice to vacate;

7 iv. The conditions that were the basis for the notice to vacate
8 were caused by fire, flood or other natural disasters;

9 v. The failure to meet the requirements of this code was due to
10 the willful or negligent acts or omissions of the owner;

11 vi. The resident was in default for non-payment of rent;

12 vii. The basis of the notice to vacate is for a condition caused by
13 the resident's or any third party's illegal conduct without the owner's prior
14 knowledge; or

15 viii. For an owner occupant of a mobile home who is renting a lot
16 or parcel for use as a site for the location of the mobile home, whether the
17 requirement to vacate was caused by actions outside the control of the
18 resident.

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

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

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

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

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

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

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

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

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

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

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

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

29 (10) The relocation agency shall provide assistance in finding
30 alternative housing for residents who are displaced and qualify for relocation
31 assistance under this Ordinance.

32 (11) From the time that the City first notifies an owner of conditions
33 that violate applicable codes, statutes, ordinances or regulations to the time

1 that the relocation assistance payments are paid to eligible residents or the
2 time the conditions cited are corrected, the owner shall not evict, harass or
3 intimidate any resident for the purpose of avoiding or diminishing application
4 of this division. Included in this prohibition is the reduction of services to a
5 resident or materially increasing or changing the obligations of any resident,
6 including rent increases, for purposes of attempting to have the resident
7 vacate the residential building.

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

10 § 11-1-1-13 JUDGMENT FOR COSTS AND ATTORNEYS' FEES. In any case in
11 which a public nuisance is established, in addition to the remedies provided
12 above, the City may petition the court for a separate civil judgment for the
13 City's costs and attorneys' fees against every person who committed,
14 conducted, promoted, facilitated, or aided the commission of any public
15 nuisance or who held any legal or equitable interest or right of possession in
16 any real property or vehicle on or in which any public nuisance occurred, or
17 any real property, vehicle or other personal property used to commit, conduct,
18 promote, facilitate or aid the commission of any public nuisance. This civil
19 judgment shall be for the purpose of compensating the City for its costs from
20 pursuing the remedies under this Ordinance.

21 § 11-1-1-14 LIEN FOR JUDGMENTS. In addition to any other remedies available
22 in this Ordinance or under the common law, the City shall have a lien against
23 the real property and other personal property on or in which any public
24 nuisance occurred or which was used to commit, conduct, promote, facilitate,
25 or aid in the commission of any public nuisance for the total of all judgments
26 imposed for costs and attorneys' fees. The City may record a statement of this
27 lien with the Bernalillo County Clerk. The City may seek foreclosure on
28 properties with unpaid liens.

29 § 11-1-1-15 EMERGENCY ABATEMENT.

30 (A) Notwithstanding any other provision in this code, if the conditions at
31 a property constitute an imminent hazard, the Mayor's designee may order
32 immediate abatement of the hazard without notice. Such abatement of an
33 imminent hazard shall be limited to the minimum work necessary to remove

1 the hazard and may include disconnection of utilities, securing of the
2 structures, installation of fencing or emergency cleaning of the property to
3 abate the hazard.

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

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

8 PART 2: DRUG LABORATORY SITE REMEDIATION OF CONTAMINATION

9 § 11-1-2-1 TITLE. This subpart shall be known and may be cited as the
10 "Cleanup of Clandestine Drug Laboratory Sites Ordinance."

11 § 11-1-2-2 FINDINGS AND INTENT. The City Council finds and states its intent
12 as follows. Clandestine drug laboratory sites are increasing in number in
13 Albuquerque and are a serious health threat to the community. Remediation of
14 the residually contaminated portions of clandestine drug laboratory sites is
15 essential to assure the health, safety and welfare of the community. Property
16 owners must share the responsibility for the clandestine drug laboratory sites
17 on their property by bearing the initial costs of remediation of such sites,
18 subject to restitution as provided in this subpart. This subpart is timely and
19 appropriate because current laws and City regulations are insufficient to
20 address the aforementioned problems. The restrictions contained herein are
21 neither over broad nor vague and are narrowly tailored to serve a substantial
22 government interest.

23 § 11-1-2-3 DEFINITIONS. For the purpose of this subpart, the following
24 definitions shall apply unless the context clearly indicates or requires a
25 different meaning.

26 CLANDESTINE DRUG LABORATORY. Property on which methamphetamine,
27 ecstasy, LSD or any other controlled substance is being manufactured or on
28 which there is an attempt to manufacture, or where a person is arrested for
29 having on any property any chemicals or equipment used in manufacturing
30 methamphetamine, ecstasy, LSD or any other controlled substance. In the
31 case of a space rental mobile home or recreational vehicle park, clandestine
32 drug laboratory means the mobile home or recreational vehicle in which
33 methamphetamine, ecstasy, LSD or any other controlled substance is being

1 manufactured or where a person is arrested for having in the mobile home or
2 recreational vehicle any chemicals or equipment used in manufacturing
3 methamphetamine, ecstasy, LSD or any other controlled substance.
4 **CLANDESTINE DRUG LABORATORY** shall include any place or area where
5 chemicals or other waste materials used in clandestine drug laboratories have
6 been located.
7 **CONTROLLED SUBSTANCE.** Any drug or substance or counterfeit substance
8 listed in the Controlled Substances Act, Chapter 30, Article 31 NMSA 1978 or
9 regulations adopted thereunder.
10 **DRUG LABORATORY SITE REMEDIATION FIRM.** A professional firm that
11 performs remediation of residual contamination from the manufacture of
12 methamphetamine, ecstasy, LSD or any other controlled substance or the
13 storage of chemicals or equipment used in manufacturing methamphetamine,
14 ecstasy, LSD or any other controlled substance.
15 **ECSTASY (3,4-METHYLENEDIOXY AMPHETAMINE).** This term has the same
16 meaning prescribed in Section 30-31-6 NMSA 1978 and includes any of the
17 precursor chemicals, regulated chemicals, other substances or equipment
18 used in the unlawful manufacture of Ecstasy and any derivatives thereof.
19 **GROSS CONTAMINATION.** The chemicals, equipment and other items that are
20 found in a clandestine drug laboratory and that are removed by a law
21 enforcement officer or law enforcement agency.
22 **INDUSTRIAL OR ENVIRONMENTAL HYGIENIST FIRM.** A professional firm that
23 conducts pre-remediation testing and post-remediation testing for the
24 remediation of residual contamination from the manufacture of
25 methamphetamine, ecstasy, LSD, or any other controlled substance or the
26 storage of chemicals or equipment used in manufacturing methamphetamine,
27 ecstasy, LSD or any other controlled substance.
28 **LAW ENFORCEMENT OFFICER.** Any employee of a police or public safety
29 department administered by the state or any political subdivision of the state
30 where the employee is responsible for the prevention and detection of crime
31 and the enforcement of the penal, traffic or highway laws of this State as
32 defined in Section 30-20A-2D NMSA 1978, and specifically includes
33 Albuquerque Police Department nuisance abatement inspectors.

- 1 LSD (LYSERGIC ACID DIETHYLAMIDE). This term has the same meaning
2 prescribed in Section 30-31-6 NMSA 1978 and includes any of the precursor
3 chemicals, regulated chemicals, other substances or equipment used in the
4 unlawful manufacture of LSD and any derivatives thereof.
- 5 METHAMPHETAMINE. This term has the same meaning prescribed in Section
6 30-31-7 NMSA 1978 and includes any of the precursor chemicals, regulated
7 chemicals, other substances or equipment used in the unlawful manufacture
8 of methamphetamine and any derivatives thereof.
- 9 OWNER. Any person, firm, corporation or other entity that owns, in whole or in
10 part, the property subject to this subpart.
- 11 PROPERTY. Real or personal property, including the area within a structure
12 and the area that surrounds a structure and that is within the land boundary or
13 property lines of any of the following:
- 14 (1) Property that can be used for residential purposes or is
15 occupied by people for any length of time for any purpose.
- 16 (2) Property that is governed by the Uniform Owner-Resident
17 Relations Act, Sections 47-8-1 et seq. NMSA 1978, or the Mobile Home Park
18 Act, Sections 47-10-2 et seq. NMSA 1978.
- 19 (3) A mobile home as defined in Section 47-10-2 NMSA 1978.
- 20 (4) A recreational vehicle as defined in Section 66-1-4.15 NMSA
21 1978 and for purposes of this subpart, "recreational vehicle" shall also include
22 a recreational travel trailer as defined in Section 66-1-4.15 NMSA 1978.
- 23 (5) A vehicle, as defined in § 8-5-2-1 ROA 1994.
- 24 RESIDUALLY CONTAMINATED PORTION OF THE PROPERTY. The structure
25 or unit where gross contamination was removed and the area of any adjacent
26 structure, unit or land where visible evidence of residual contamination is
27 observed by a law enforcement officer, including any of the following:
- 28 (1) If gross contamination is removed from a house, mobile home
29 or recreational vehicle and the notice of removal is posted for the entire
30 house, mobile home or recreational vehicle, then the entire house, mobile
31 home or recreational vehicle, not just the room or rooms in which the gross
32 contamination is found shall be deemed the residually contaminated portion
33 of the property.

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

6 (3) If gross contamination is removed from a hotel, motel room or
7 apartment unit, the adjacent rooms are not affected and the notice of removal
8 is posted only for the contaminated room or apartment unit, then the
9 contaminated room or apartment unit shall be deemed the residually
10 contaminated portion of the property.

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

14 § 11-1-2-4 DECLARATION OF PUBLIC NUISANCE. Upon identification by a law
15 enforcement officer of a clandestine drug laboratory site, the property shall
16 constitute a public nuisance until such time as the remediation required by
17 this subpart is completed.

18 § 11-1-2-5 CLANDESTINE DRUG LABORATORIES.

19 (A) PROCEDURES. If a law enforcement officer discovers a clandestine
20 drug laboratory or arrests a person for having on any property chemicals or
21 equipment used in manufacturing methamphetamine, ecstasy, or any other
22 controlled substance or a derivative of methamphetamine, ecstasy, LSD or
23 any other controlled substance, the law enforcement officer shall:

24 (1) At the time of the discovery or arrest, shall deliver a copy of
25 the notice of removal pursuant to subsection (B) of this section to the owner
26 of the property if the owner is on the site at the time of delivery, the on-site
27 manager if the manager is on the site at the time of delivery or the on-site drop
28 box if available. In the case of a tenant-owned unit in a space rental mobile
29 home or recreational vehicle park, the officer shall deliver a copy of the notice
30 of removal to the occupant of the unit if the occupant is on-site at the time of
31 delivery and to the on-site park landlord if the park landlord is on-site at the
32 time of delivery.

1 (2) If the owner or the owner of a space rental mobile home or
2 recreational vehicle park or their agent for service is not personally provided a
3 copy of the notice of removal under the procedures of subsection (A)(1) of this
4 section, then within two City business days after the discovery or arrest, the
5 law enforcement officer shall send the notice of removal by certified mail to
6 the owner of the property and the owner's on-site manager or, in the case of a
7 space rental mobile home or recreational vehicle park, to the owner of the
8 mobile home or recreational vehicle, if applicable, and to the park landlord.
9 These persons are deemed to have received the notice of removal five days
10 after the notice is mailed.

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

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

15 (a) The address of the owner and the owner of the mobile
16 home or recreational vehicle park as shown on file with the County Assessor.

17 (b) The Albuquerque Environmental Health Department.

18 (c) The Albuquerque Fire Department.

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

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

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

31 (7) The law enforcement officer shall cause a Certificate of
32 Substandard Property to be filed with the Bernalillo County Assessor upon

1 posting the notice of removal. Such certificate shall include a legal description
2 of the property and have attached to it the notice of removal.

3 (B) NOTICE. The notice of removal shall be in writing and shall contain
4 all of the following:

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

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

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

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

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

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

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

30 (8) A statement that the failure to remediate the residual
31 contamination pursuant to the Cleanup of Clandestine Drug Laboratory Sites
32 Ordinance is punishable by imprisonment up to 90 days and/or a fine up to
33 \$500.

1 (9) A statement that disturbing the notice of removal posted on
2 the property is punishable by imprisonment up to 90 days and/or a fine up to
3 \$500.

4 (10) A statement that the owner of the property shall remediate the
5 residually contaminated portion of the property in compliance with subsection
6 (C) of this section.

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

11 (C) REMEDIATION BY OWNER. The owner of the property shall
12 remediate the residually contaminated portion of the property by retaining an
13 industrial or environmental hygienist firm to pre-test the property to determine
14 the extent of the contamination and the nature of the required remediation.
15 When the industrial or environmental hygienist firm determines that
16 remediation is required, the owner shall retain a drug laboratory site
17 remediation firm to conduct the remediation. The industrial or environmental
18 hygienist firm and the drug laboratory site remediation firm shall be separate
19 and unaffiliated business entities. The owner shall retain the industrial or
20 environmental hygienist firm and the drug laboratory site remediation firm
21 within 30 days of the day of delivery of personal service of the notice of
22 removal or within 35 days of the date the notice of removal is mailed by
23 certified mail or posted on the property. Remediation shall be completed
24 within 60 days of the day of delivery of personal service of notice to the owner
25 or within 65 days of the date notice is mailed by certified mail to the owner or
26 for such other period of time that is approved in writing by the Albuquerque
27 Police Department.

28 (D) REMEDIATION PROCEDURES. An industrial or environmental
29 hygienist firm and the drug laboratory site remediation firm retained to
30 remediate the residually contaminated portion of any property pursuant to this
31 section shall comply with the best practices and standards for remediation of
32 residual contamination. The industrial or environmental hygienist firm shall
33 notify the owner whenever the firm determines that any structure requires

1 remediation of contamination as required in this section. The owner shall send
2 such notification of required remediation of contamination to Albuquerque
3 Police Department, the City Environmental Health Department and the City's
4 Chief Building Official. Within one business day after the remediation is
5 complete, the drug laboratory site remediation firm shall notify the
6 Albuquerque Police Department, the City Environmental Health Department
7 and the industrial or environmental hygienist firm that the property is ready for
8 final inspection. After inspection by the industrial or environmental hygienist
9 firm, the industrial or environmental hygienist firm shall issue a final clearance
10 document certifying that remediation of the residually contaminated portion of
11 the property was completed pursuant to the standards for remediation of
12 residual contamination and shall deliver the certification document or send
13 the document by certified mail to the owner. The owner shall provide a copy of
14 the certification of completed remediation to each person and entity listed in
15 subsection (A)(4) of this section, the City's Chief Building Official and the law
16 enforcement agency that issued the notice under that subsection. After the
17 final clearance document has been issued, both of the following apply:

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

20 (2) Any person may use, enter, occupy, rent or sell the property.
21 It shall be the responsibility of the owner of the property to file with the County
22 Assessor the document stating that the residually contaminated portion of the
23 property has been remediated. The owner shall also be responsible for the
24 costs associated with filing. The issuance of the document certifying that
25 remediation of the residually contaminated portion of the property was
26 completed pursuant to the standards for remediation of residual
27 contamination shall be a prerequisite for a certificate of occupancy or any City
28 required building inspection and shall not be in lieu of a certificate of
29 occupancy or any City required building inspection.

30 (E) CONTAMINATED VEHICLES. If gross contamination is removed from
31 a vehicle, the notice of removal required in subsection (B) of this section shall
32 be sent by certified mail to the owner of record and lien holder of record, if any
33 exists. Impounded vehicles containing residual contamination shall not be

1 released to the owner or lien holder until the remediation has been completed
2 and paid for by the owner or lien holder. Remediation shall be accomplished
3 by following the same procedures as set forth in subsection (D) of this
4 section. Remediation costs as defined in subsection (J) of this section shall be
5 in addition to any other towing, storage, or other impoundment fees.

6 (F) NOTICE TO BUYERS AND OCCUPANTS. The following notice
7 requirements apply until the remediation is complete as provided in
8 subsection (D) of this section:

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

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

28 (3) Before a customer occupies a room that was the subject of the
29 notice of removal, as described in subsection (A) of this section, the owner or
30 manager shall notify the customer in writing the room was the subject of a
31 notice of removal as described in subsection (A) and (B) of this section, that
32 methamphetamine, ecstasy, LSD or any other controlled substance was
33 manufactured in the room or that an arrest, as described in subsection (A) of

1 this section, was made. The customer shall acknowledge receipt of the notice
2 before taking possession of the room and before signing a room rental
3 agreement. If the owner or manager does not comply with this paragraph, the
4 customer may void the agreement.

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

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

19 (G) MOBILE HOME OR RECREATIONAL VEHICLE SPACE RENTAL
20 PARKS. If a mobile home or recreational vehicle in a space rental park contains
21 a clandestine drug laboratory, the landlord of the park, on receipt of a notice
22 pursuant to subsection (A) of this section, shall notify the owner and lienholder
23 of record of the unit to remove the unit from the park within 30 days. This
24 provision shall not apply when the owner of the contaminated mobile home or
25 recreational vehicle is also the owner of the mobile home or recreational
26 vehicle space rental park in which such contaminated mobile home or
27 recreational vehicle is located. If the unit is not removed within 30 days, the
28 landlord of the park shall remediate the contamination following the
29 requirements set forth in subsections (C) and (D) of this section.

30 (H) RESTITUTION TO OWNER. A person who operates a clandestine
31 drug laboratory and who is not the owner of the property shall pay restitution
32 to the owner of the property for all costs that the owner incurred to remediate
33 the property and, in the instance of a mobile home or recreational vehicle, the

1 cost incurred by the owner of a space rental park for moving and/or
2 remediating such property.

3 (I) REMEDIATION BY CITY. If an owner of property, a vehicle
4 owner, a vehicle lien holder or an owner of a mobile home or recreational
5 vehicle space park, as described under subsection (G) of this section, fails to
6 comply with the remediation of the residually contaminated property or portion
7 of the property as required in this section, the City may remediate the
8 residually contaminated portion of the property or seek a court order requiring
9 the owner to remediate in the manner required in this section. If the City is
10 unable to locate the owner within ten days after the issuance of the Certificate
11 of Substandard Property, the City may proceed with remediation. If the City
12 remediates the contamination, the owner shall pay to the City all costs related
13 to such remediation. If the owner fails to pay the City for its costs of
14 remediation, the City shall be entitled to file a lien against such property for the
15 costs related to the remediation and bring legal action against the owner for
16 such remediation costs. Remediation costs shall include the expense for
17 posting, physical security of the contaminated site, notification of affected
18 people, businesses or any other entity, expenses related to the recovery of
19 cost, laboratory fees, cleanup services, costs for testing for residual
20 contamination, removal costs, and cost incurred for an industrial or
21 environmental hygienist firm and a drug laboratory site remediation firm. When
22 a contaminated vehicle is impounded, the vehicle shall not be released to the
23 owner or a lien holder until remediation is completed and paid by the owner or
24 lien holder and impoundment fees are paid by the owner or lien holder.
25 Remediation costs for vehicles in which gross contamination is found shall
26 include the costs for testing for residual contamination regardless of whether
27 residual contamination is actually required to be remediated. Impoundment
28 fees shall include those fees defined as impoundment charges in § 8-5-2-1 ROA
29 1994. The City or its contractors may remove property as part of its remediation
30 effort.

31 PART 3: DRUG FREE ZONES.

32 § 11-1-3-1 INTENT. The public purpose of §§ 11-1-3-1 et seq. is to decrease the
33 number of occurrences of the illegal sale and purchase of drugs or imitation

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1 drugs in areas in the City where that number is significantly greater than in
2 other areas of the City, and to protect the health, safety and welfare of citizens
3 using the public right-of-way in such areas.

4 § 11-1-3-2 SHORT TITLE.

5 Sections 11-1-3-1 et seq. may be cited as the “Drug Free Zone Ordinance.”

6 § 11-1-3-3 FINDINGS.

7 The City Council makes the following findings:

8 (A) Certain areas of the City have a significantly higher incidence of
9 conduct associated with trafficking in narcotics and other controlled
10 substances than other areas of the City. This concentration of narcotics
11 activity contributes to the degradation of those areas and also adversely
12 affects the overall quality of life for those areas' residents, businesses, and
13 visitors.

14 (B) Many persons arrested in Albuquerque for delivering controlled
15 substances or imitation controlled substances frequently return to the same
16 location or general vicinity of their arrest because the area has proven to be a
17 lucrative place for trafficking in controlled substances.

18 (C) After arresting drug dealers, police officers frequently encounter the
19 same persons shortly thereafter in the same area, engaging in the same
20 criminal activity.

21 (D) The City has a substantial and compelling interest in restoring the
22 quality of life and protecting the health, safety, and welfare of citizens using
23 the public right-of-way in such areas. The government has a substantial and
24 compelling interest in allowing the public to use and enjoy the facilities in
25 such areas without interference arising from sales of drugs or imitation drugs.

26 (E) The processes presently available do not adequately control this
27 type of activity and the detrimental effects on the areas where this activity
28 occurs.

29 (F) Individuals have a significant private interest in being able to travel
30 and associate freely in all areas of the City. However, the public interest in
31 preventing the harmful effects of drug dealing is so great that it justifies
32 excluding the drug sellers for 90 days from an impacted area in which they
33 have sold drugs or imitation drugs.

1 (G) The City's health, safety and welfare would best be served by
2 temporarily excluding from impacted areas those persons who are arrested
3 therein for the unlawful delivery of controlled substances or of imitation
4 controlled substances.

5 (H) To minimize the likelihood of erroneous deprivation, the City should
6 provide persons who are arrested therein for a crime listed in § 11-1-2-6 herein
7 an opportunity to quickly challenge their exclusions and have a timely hearing
8 before a Hearing Officer before their exclusion from the drug free zone
9 becomes effective.

10 (I) To ensure that health care and other legitimate needs are met,
11 variances should be available to those individuals with compelling need to
12 enter the drug free zone to preserve their health or well-being.

13 § 11-1-3-4 DRUG FREE ZONES; CRITERIA. Drug free zones are those areas
14 where the number of arrests for conduct prohibited by Sections 3-31-20
15 through 25.1 NMSA 1978, Sections 3-31A-4 through 6 NMSA 1978, or § 12-4-16
16 of this code of ordinances, for the 24 month period preceding the original
17 designation is significantly higher than that for other similarly sized areas of
18 the City.

19 § 11-1-3-5 DESIGNATION OF DRUG FREE ZONE. If the City Council designates
20 an area meeting the criteria of § 11-1-2-4 to be a drug free zone, it shall do so
21 by ordinance, and the designation shall be valid for an initial period of two
22 years. Thereafter, the Council may extend the time of the designation as it
23 deems appropriate, but in no event shall the total be more than ten years. The
24 City Council may also remove the designation in the event it deems that
25 appropriate. The removal of the designation shall be by ordinance.

26 § 11-1-3-6 PERSONS SUBJECT TO EXCLUSION.

27 (A) A person is subject to exclusion for a period of 90 days from the
28 public streets, sidewalks, and other public ways in all drug free zones
29 designated in § 11-1-2-9 herein if that person has been arrested or otherwise
30 taken into custody within any drug free zone for any of the following crimes:

31 (1) Unlawful possession of a controlled substance, in violation of
32 Section 3-31-23 NMSA 1978;

(2) Unlawful distribution of a controlled substance, in violation of Section 3-31-22 NMSA 1978;

(3) Trafficking a controlled substance, in violation of Section 30-31-20 NMSA 1978;

(4) Distributing a controlled substance to a minor, in violation of Section 30-31-21 NMSA 1978;

(5) Unlawful manufacture, distribution or possession of an imitation controlled substance, in violation of Section 30-31A-4 NMSA 1978 or § 12-4-16 of this code of ordinances; or

(6) Unlawful possession with intent to distribute an imitation controlled substance, in violation of Section 30-31A-6 NMSA 1978 or § 12-4-16 of this code of ordinances;

(7) Unlawful sale to a minor of an imitation controlled substance, in violation of Section 30-31A-5 NMSA 1978.

(B) If a person excluded from all designated drug free zones is found in any drug free zone during the exclusion period, that person is subject to immediate arrest for criminal trespass pursuant to § 12-2-3 of this code of ordinances.

§ 11-1-3-7 AUTHORITY TO ISSUE EXCLUSION NOTICES. The Mayor or the Mayor's designee shall be responsible for the public streets, sidewalks, and public ways in drug free zones for the purpose of issuing exclusion notices in accordance with §§ 11-1-2-1 et seq. The Mayor may authorize the Police Department to issue exclusion notices in accordance with §§ 11-1-2-1 et seq.

§ 11-1-3-8 NOTICE OF EXCLUSION. At the time a person is arrested within a drug free zone for any of the crimes listed in § 11-1-2-6, the officer making such arrest may deliver to the person a written notice excluding the person from all drug free zones. The notice shall specify the areas designated as drug free zones from which that person is excluded and contain information concerning the right to appeal the exclusion notice to the Hearing Officer. The person to whom the exclusion notice is issued shall sign a written acknowledgment of receipt of the exclusion notice. If that person refuses to do so, the arresting officer shall make a written record of the refusal.

§ 11-1-3-9 APPEAL AND VARIANCE.

1 (A) The person to whom an exclusion notice is issued shall have a right
2 to an appeal from the issuance of the notice.

3 (1) An appeal of the exclusion must be filed, in writing, within five
4 calendar days of the notice's issuance. A hearing on the appeal shall be had
5 as provided herein.

6 (2) The exclusion shall not take effect during the pendency of the
7 appeal. If no appeal is taken, the exclusion shall take effect on the sixth
8 calendar day after the notice's issuance.

9 (3) The City shall have the burden to show by a preponderance of
10 evidence that the exclusion is based on conduct which constitutes any of the
11 crimes enumerated in § 11-1-2-6 herein. Copies of documents in its control
12 and which are intended to be used by the City at the hearing shall be made
13 available to the appellant at least two days prior to the hearing.

14 (4) The decision resulting from the hearing may be appealed to
15 the state district court.

16 (B)

17 (1) A determination by a court having jurisdiction of the matter
18 that the officer who issued the exclusion notice, at that time had probable
19 cause to arrest the person to whom the exclusion notice was issued for
20 violation of one or more crimes enumerated in § 11-1-2-6 herein, shall be prima
21 facie evidence that the exclusion was based on conduct proscribed by those
22 statutes.

23 (2) Variances from an exclusion may be granted at any time
24 during the exclusion period by either the Mayor or Mayor's designate or by a
25 social service agency which provides services within the drug free zone for
26 which the variance is granted, only for reasons relating to the health or
27 welfare, or well-being of the person excluded. The Mayor shall grant a variance
28 to any person who can establish that he or she:

29 (a) Was a bona fide resident of the drug free zone prior to
30 receipt of the exclusion notice; or

31 (b) Was a bona fide owner, principal or employee of a place
32 of employment located in one of the designated drug free zones.

1 (c) Must conduct official business with the City, County,
2 State or Federal governments, including the Metropolitan, State and Federal
3 Courts, in a drug free zone.

4 (d) Desires to attend a house of worship located in one of
5 the designated drug free zones.

6 (3) The variance will allow access only to the designated drug free
7 zone specified in the variance.

8 (4) Only those social service agencies which have written rules
9 and regulations prohibiting the use or sale of controlled substances by their
10 clients and which have entered into a written agreement with the City
11 concerning the applicability and enforceability of those rules are eligible to
12 grant variances.

13 (5) All variances shall be in writing, for a specific period of time
14 and only to accommodate a specific purpose, all of which shall be stated on
15 the variance. The person shall keep the variance on his or her person at all
16 times the person is within the specific drug free zone for which the variance
17 was granted. In the event a person having a variance is found to be outside
18 the scope of the variance's terms, that person is thereupon subject to
19 immediate arrest for criminal trespass pursuant to § 12-2-3 of this code of
20 ordinances.

21 (6) In the event a person holding a variance is arrested for
22 conduct prohibited by state or federal law involving controlled substances, the
23 variance shall immediately become void and that person shall be ineligible for
24 any new variances for a period of one year from the date of the arrest.

25 § 11-1-3-10 LISTING OF DRUG FREE ZONES. The following areas are
26 designated as drug free zones:

27 (A) The area which begins at a point at the intersection of Lomas Blvd.
28 NW and 12th Street NW and proceeds east to the intersection of Lomas Blvd.
29 NW and North Broadway, then proceeds north to Odelia NE, then proceeds
30 east along Odelia/Indian School NE to the west boundary of Interstate 25
31 South, then proceeds south along Interstate 25 South to the intersection of
32 Gibson SE and the interstate, then proceeds west to the intersection of Gibson
33 SE and Broadway Blvd. SE, then proceeds south to the intersection of

1 Broadway Blvd. SE and Bethel Avenue SW, then proceeds west to the
2 intersection of Bethel Avenue and the Atchison Topeka and Santa Fe Railroad
3 Right of Way, then north along the railroad right-of-way to the intersection of
4 Bridge Blvd. SW and the railroad right of way, then proceeds west along
5 Bridge Blvd. SW to the intersection of Bridge Blvd. and 8th Street SW, then
6 proceeds north along 8th Street SW to the intersection of 8th Street and Coal
7 Avenue SW, then proceeds west along Coal Avenue SW to the intersection of
8 Coal Avenue and 10th Street SW, then proceeds north along 10th Street to the
9 intersection of 10th Street and Copper NW and Central NW, then proceeds
10 northwest along Central NW to the intersection of Central Avenue and 12th
11 Street NW, then proceeds north along 12th Street to the point of origin at the
12 intersection of 12th Street NW and Lomas Blvd. NW, including the public right-
13 of-way.

14 (B) The area which begins at the point of the intersection of Copper NE
15 and Eubank NE and proceeds south to the intersection of Eubank NE and
16 Central NE, then proceeds west to the intersection of Central and Zuni SE,
17 then proceeds west to the intersection of Zuni and Wyoming SE, then
18 proceeds south to the municipal limits and follows the municipal limits
19 westerly to the intersection of Ridgecrest and San Mateo SE, then proceeds
20 north to the intersection of San Mateo and Zuni SE, then proceeds west along
21 Zuni, then Lead SE to the intersection of Lead and Carlisle SE, then proceeds
22 north to the intersection of Central and Carlisle NE, then proceeds east to the
23 intersection of Central and Louisiana NE, then proceeds north to the
24 intersection of Louisiana and Lomas, NE, then proceeds east to the
25 intersection of Lomas and Wyoming NE, then proceeds south to the
26 intersection of Wyoming and Copper NE, then proceeds east to the point of
27 origin at the intersection of Copper NE and Eubank NE, including the public
28 right-of-way. The area which falls within a line which begins at the intersection
29 of Rio Grande Blvd. NW and Los Anayas Road NW and proceeds west to the
30 intersection of Los Anayas Road and Gabaldon Road NW, then proceeds
31 south to the intersection of Gabaldon Road NW and the municipal boundary,
32 then proceeds easterly and southeasterly along the municipal boundary to the
33 Duranés Ditch, then proceeds southerly along the municipal boundary to the

1 intersection of Montoya Street NW and Maximillian Road NW, then proceeds
2 westerly along the municipal boundary to the Riverside Drain, then proceeds
3 southerly along the Riverside Drain to the intersection of the Riverside Drain
4 and Central Avenue NW, then proceeds easterly along Central Avenue NW to
5 the intersection of Central Avenue NW and Rio Grande Blvd. NW, then
6 proceeds north along Rio Grande Blvd. NW to the point of origin at the
7 intersection of Rio Grande Blvd. NW and Los Anayas Road NW, including the
8 public right-of-way, and excluding any unincorporated areas of Bernalillo
9 County that fall within the designated area.”

10 SECTION 3. COMPILATION. Sections 1 and 2 of this Ordinance amends, is
11 incorporated in, and is to be compiled as a part of the Revised Ordinances of
12 Albuquerque, New Mexico, 1994.

13 SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect five (5)
14 days after publication by title and general summary.

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