CITY of ALBUQUERQUE TWENTY FIFTH COUNCIL

COUNCIL BILL NO. 0-22-31 ENACTMENT NO.

SPONSORED BY: **Tammy Fiebelkorn**

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1 ORDINANCE ADDING A NEW SECTION TO THE CRIMINAL CODE (CHAPTER 12, ARTICLE 2, 2 **ROA 1994) TO PROHIBIT THE UNAUTHORIZED PRESENCE AND CAMPING IN** 3 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 Bracketed/Strikethrough Material] - Deletion 12 05 61 81 21 91 51 71 15 17 05 61 81 21 91 51 71 15 17 flowing water that have the hydraulic power to overwhelm and carry away persons or objects that are present in the conveyance systems when the water flows occur; and

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

WHEREAS, to provide for public safety there is subsequently a need to restrict access to these conveyance systems to only those persons with 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 Albuquergue, 1994, as 3 follows: 4 "[§12-2-30 UNAUTHORIZED PRESENCE AND CAMPING IN DRAINAGE CHANNELS, ARROYOS AND IRRIGATION CHANNELS. 5 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 Bracketed/Strikethrough Material] - Deletion 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 the 26 area within which the public agency owns, operates or maintains the drainage 27 channel, arroyo, irrigation channel or piping, and is not restricted to the 28 drainage channel, arroyo, irrigation channel, or piping. 29 Water Conveyance System An engineered or natural channel intended to transport water, including an arroyo, drainage channel, irrigation channel, and 30 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		that designated as "Open Space."
	11	(D)	It is unlawful for any person remain in an open space or recreational trail
	12		that is within the right of way of a water conveyance channel after having
	13		been instructued to leave by an employee of the public agency that
	14		controls the water conveyance sytem, their designated representative, or
	15		a law enforcement official, due to a public safety issue or to allow the
	16		agency to conduct facility maintenance.
	_ 17	(E)	<u>It is unlawful for any person to operate a motor vehicle or an off highway</u>
Ň	Deletion 81		vehicle in the right of way of a water conveyance system, that is owned,
- New	19 <u>19</u>		maintained or operated by a public agency, including any water
			conveyance system designated as "Open Space" or as a recreation trail,
Materiall	<u>1</u> 1 1 1 2 1		except for public safety personnel and employees of the public agency
	≦ 22		that owns, maintains or operates said water conveyance system, or those
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	<u>⊈</u> 24	(F)	The penalties set forth in § 12-1-99 shall apply for a violation of this
	<u>+</u> 25		section; provided, however, that a law enforcement officer, shall first
eted	S/p 26		issue a written warning to a person for violating this section in lieu of a
ack	[Bracketed/Strikethrough Material] 5 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2		citation or conducting an arrest. However, in the event of an immediate
B			danger, a verbal warning prior to a citation or arrest is permitted]"
	29	5	SECTION 2. SEVERABILITY. If any section, paragraph, sentence, clause,
	30	wor	d, or phrase of this Ordinance is for any reason held to be invalid or
	31	unenforceable by any court of competent jurisdiction, such decision shall not	
	32	affe	ct the validity of the remaining provisions of this Ordinance. The Council

hereby declares that it would have passed this ordnance 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. 30 x/cl/users/ccotgm/Fiebelkor/Arroyo and Ditch Safety/Study Phase/Stormwater Conveyance

Channel Safety Resolution.

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