

# CITY of ALBUQUERQUE

## TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-31 ENACTMENT NO. \_\_\_\_\_

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:**

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

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 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  
30 transport water, including an arroyo, drainage channel, irrigation channel, and  
31 piping.

- 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 instructed 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) 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 issue a written warning to a person for violating this section in lieu of a  
27 citation or conducting an arrest. However, in the event of an immediate  
28 danger, a verbal warning prior to a citation or arrest is permitted"]

29 SECTION 2. SEVERABILITY. If any section, paragraph, sentence, clause,  
30 word, 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 affect the validity of the remaining provisions of this Ordinance. The Council

1 hereby declares that it would have passed this ordinance and each section,  
2 paragraph, sentence, clause, word, or phrase thereof irrespective of any  
3 provision being declared unconstitutional or otherwise invalid.

4 SECTION 3. COMPILATION. Section 1 of this Ordinance shall amend, be  
5 incorporated in, and made part of the Revised Ordinances of Albuquerque,  
6 New Mexico, 1994, as a new Section 12-2-30 to be added to Article 2, Chapter  
7 12 and titled "Unauthorized Presence and Camping in Water Conveyance  
8 Channels."

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

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30 x/cl/users/ccotgm/Fiebelkor/Arroyo and Ditch Safety/Study Phase/Stormwater Conveyance  
31 Channel Safety Resolution.