

**CITY of ALBUQUERQUE
TWENTY SIXTH COUNCIL**

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

SPONSORED BY: Renée Grout, by request

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ORDINANCE

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

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

SECTION 1. REPEAL

Chapter 11, Article 1, Parts 1 and 2 R.O.A. 1994 is hereby repealed in its
entirety.

SECTION 2. NEW MATERIAL.

Chapter 11, Article 11 is hereby added to read as follows:

“PART 1: NUISANCE ABATEMENT

SUBPART A: GENERAL PROVISIONS

§ 11-1-1-1 SHORT TITLE.

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

§ 11-1-1-2 INTENT.

**The purpose of this ordinance is to prevent the use of property as a public
nuisance and to establish procedures to eliminate and abate nuisances.**

§ 11-1-1-3 DEFINITIONS.

**For the purposes of this ordinance, the following definitions shall apply unless
the context clearly indicates or requires a different meaning.**

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

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

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

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1 such failure leads to repeat activity that adversely affects public health,
2 welfare or 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
11 and Restraint Standards for Mammals and Birds
12 Kept on Residential Property;
- 13 (d) Humane and Ethical Animal Rules and Treatment
14 (HEART) Ordinance, § 9-2-4-7 ROA 1994, Animal
15 Noise;
- 16 (e) Humane and Ethical Animal Rules and Treatment
17 (HEART) Ordinance, § 9-2-4-8 ROA 1994, Animal
18 Fights;
- 19 (f) Albuquerque Insect and Rodent Control
20 Ordinance, § 9-7-1 to § 9-7-99 ROA 1994;
- 21 (g) Weed and Litter Ordinance, § 9-8-1 to § 9-8-99
22 ROA 1994;
- 23 (h) Uniform Housing Code, § 14-3-1-1 to § 14-3-5-99
24 ROA 1994; or
- 25 (i) Fire Code, § 14-2-1 ROA 1994.

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

28 REAL PROPERTY. Land and all improvements, buildings, and structures, and
29 all estates rights and interests, legal and equitable, in the same, including all
30 forms of ownership and title, future interests, condominium rights, time-share
31 rights, easements, water rights, mineral rights, oil and gas rights, space rights,
32 and air rights.

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- 1 RELOCATION COSTS. The expenses reasonably incurred by a resident
2 displaced from a residential building pursuant to action of the City of
3 Albuquerque. Relocation costs shall be \$2,000 per family unless the resident
4 can demonstrate special circumstances that make the relocation cost a
5 greater amount. If special circumstances are demonstrated, relocation costs
6 may include the actual cost of physically moving to a residential building
7 approved by the relocation agency (the “replacement unit”); costs of moving
8 to a location outside of the immediate area; any security/damage deposit
9 required by the replacement unit owner which exceed the amount of the
10 security/ damage deposit recovered from the owner of the building the
11 resident is moving from; utility deposits and hook up cost and the rent for the
12 first month; costs of moving back to the residential building originally vacated
13 after housing code compliance; and any other reasonable relocation costs.
14 RENTAL AGREEMENT. Any written or oral agreement allowing occupancy of a
15 residential building by a resident.
16 RESIDENT. One or more people entitled under a rental agreement to occupy
17 all or a portion of a residential building to the exclusion of others and who
18 actually reside(s) at such location.
19 RESIDENTIAL BUILDING. A building or portion thereof designed or used for
20 human habitation.
21 STRUCTURE. Anything constructed, erected, or placed upon real property
22 which is so firmly attached to the land as to be reasonably considered part of
23 the real estate, and includes buildings of every type and nature whatsoever.
24 TENANT. Any person who uses, resides in, or occupies property identified as
25 a public nuisance, regardless of whether the tenant has the consent of the
26 owner to use, reside, or occupy the property.
27 VEHICLE. Every device in, upon or by which any person or property is or may
28 be transported or drawn upon a highway, including any frame, chassis or
29 body of any vehicle or motor vehicle, except devices moved exclusively by
30 human power or used exclusively upon stationary rails or tracks.
31 § 11-1-1-4 ADMINISTRATION.

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1 The Mayor or Mayor’s designee shall be responsible for the administration of
2 this article and may promulgate reasonable rules and regulations to carry out
3 the intent and purpose of this article.

4 § 11-1-1-5 SEVERABILITY.

5 If any section, paragraph, sentence, clause, word or phrase of §§ 11-1-1-1 et
6 seq. is for any reason held to be invalid or unenforceable by any court of
7 competent jurisdiction, such decision shall not affect the validity of the
8 remaining provisions of §§ 11-1-1-1 et seq. The Council hereby declares that it
9 would have passed §§ 11-1-1-1 et seq. and each section, paragraph, sentence,
10 clause, word or phrase thereof irrespective of any provision being declared
11 unconstitutional or otherwise invalid.

12 SUBPART B:

13 CRIMINAL ABATEMENT OF PUBLIC NUISANCE OFFENSES

14 § 11-1-1-6 PUBLIC NUISANCES PROHIBITED.

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

20 (B) An owner of property whose own activities on the real property are not a
21 nuisance shall not be in violation of this ordinance if the owner has no
22 knowledge of the public nuisance activity and, within a reasonable time
23 after receiving notice of the activity constituting a nuisance, the owner:

24 (1) Demonstrates to the City that the rental agreement for the
25 property contains a provision prohibiting criminal activity and other
26 nuisance activity;

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

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

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- 1 (4) Initiates necessary and appropriate legal action to remove
- 2 residents involved in criminal activity where such activity can be proven;
- 3 (5) Takes all reasonable and available steps to terminate the
- 4 public nuisance activity, including, but not limited to, implementing the
- 5 city’s Crime Prevention Standards on the property; and
- 6 (6) Enters into a written Nuisance Abatement Agreement with the
- 7 City wherein the property owner agrees to take specific steps, which may
- 8 include providing on-site security or otherwise taking action that will abate,
- 9 terminate or eliminate the public nuisance activity on the property in
- 10 exchange for the City reserving its rights and agreeing not to initiate any
- 11 legal action for public nuisance against the property owner during the term
- 12 of the agreement provided that the property owner complies with the terms
- 13 and conditions of the written Nuisance Abatement Agreement and the
- 14 public nuisance is eliminated, abated or terminated.

15 (C) No person shall be in violation of this ordinance if the nuisance
16 designation is based solely on violations of the following and the
17 individual is determined to be the victim of domestic violence:

- 18 (1) Assault against a household member, NMSA 1978, § 30-
- 19 3-12;
- 20 (2) Aggravated assault against a household member, NMSA
- 21 1978, § 30-3-13;
- 22 (3) Assault against a household member with intent to
- 23 commit a violent felony, NMSA 1978, § 30-3-14;
- 24 (4) Battery against a household member, NMSA 1978, § 30-
- 25 3-15; or
- 26 (5) Aggravated battery against a household member, NMSA 1978,
- 27 § 30-3-16.

28 § 11-1-1-7 PENALTIES FOR PUBLIC NUISANCE VIOLATIONS.

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

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- 1 (B) Upon conviction of violation of this ordinance, the City shall register the
2 violating property with the appropriate City agencies and/or the Bernalillo
3 County Clerk.
- 4 (C) Conditions of suspended sentences. In the event that the court chooses
5 to suspend any portion of the fine or sentence for a violation of this
6 ordinance, the City shall request that the Court make the suspended
7 sentence expressly conditional on the following terms:
- 8 (1) The Defendant must evict, remove, and permanently bar from
9 entering the property any persons who committed the criminal activity
10 forming the basis of the public nuisance, including the defendant himself,
11 his or her family members and relatives, and owners, tenants, occupants,
12 guests, and other persons. This may be accomplished through forcible
13 entry and detainer actions, sale of the property, new leases of the property,
14 or other legal action as needed; and
- 15 (2) The Defendant must take steps to abate the public nuisance,
16 eliminate its past and continuing adverse effects on the neighborhood, and
17 prevent public nuisances from recurring on the property. Such steps may
18 include landlord training, tenant background checks and screening,
19 making improvements to the property, including general repairs which will
20 bring the property into compliance with the Uniform Housing Code, §§ 14-
21 3-1 et seq., ROA 1994, Integrated Development Ordinance, §§ 14-16-1-1, et
22 seq., ROA 1994, including fencing, lighting, and destruction of structures,
23 modifications to leases, security guards, removal of trash, junk, and
24 graffiti, and compliance with all other applicable City Codes; and
- 25 (3) Any other conditions the court deems appropriate.
- 26 (D) Posting and publication of public nuisance convictions. Upon the
27 conviction of any person for violating this ordinance, in addition to any
28 fine and/or jail sentence, the city may file in the office of the Bernalillo
29 County Clerk a certificate describing the real property and that it has been
30 found to be a public nuisance. The City may also post such notices in
31 prominent places on the real property on which the public nuisance
32 occurred. These notices may be attached to any structure on the real
33 property. The City shall have the right to enter the real property for the

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1 purpose of erecting, affixing, maintaining and removing these notices.
2 The City may also publish or release notices describing the property and
3 stating that it has been found to be a public nuisance in or to
4 newspapers, periodicals, magazines, fliers and other print media, and
5 may release such notices to television, radio and cable media, or on its
6 website. The city may post the property and release or publish the notices
7 provided above for a period not exceeding one year from the conviction,
8 or, in the event that the conviction is appealed, one year from the date the
9 conviction is affirmed. It shall be unlawful for any person to interfere with,
10 remove, obliterate, obscure, cover, or destroy any notice posted pursuant
11 to the provisions of this section.

12 (E) Additional and alternative remedies. In addition or in the alternative to the
13 criminal fines, sentences, conditions of suspended sentences,
14 publication, posting, press and media releases, and other sanctions
15 provided above, the City may also seek administrative remedies against
16 any license and the civil remedies provided in this ordinance. These
17 remedies shall be cumulative, and the city may pursue one or more of
18 them, simultaneously or in succession.

19 SUBPART C:
20 CIVIL ABATEMENT OF PUBLIC NUISANCE OFFENSES
21 § 11-1-1-8 INTENT.

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

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- 1 rights. The remedial actions provided in this subpart are intended to be
2 civil in nature.
- 3 (B) In order to ensure that the remedies provided in this ordinance are
4 applied in good faith and for the purposes of public nuisance abatement,
5 no City employee's or law enforcement officer's employment or level of
6 salary shall depend upon the frequency or quantity of actions and
7 remedies under this ordinance that he or she produces.
- 8 (C) This subpart is not intended to authorize any act expressly prohibited by
9 state law, nor to forbid any conduct expressly authorized by state law.
10 The provisions of this subpart shall be construed to avoid any such direct
11 and express conflict.
- 12 (D) The sections of this subpart are intended to provide a comprehensive
13 scheme for civil public nuisance abatement and should be read together.
- 14 (E) The remedies provided in Subpart C of this ordinance are cumulative and
15 supplementary to the criminal penalties provided in Subpart B of this
16 ordinance, the criminal remedies provided by any other criminal
17 ordinance or statute, other civil remedies, and any administrative
18 proceedings to revoke, suspend, fine, or take other action against any
19 license. The City may pursue the remedies provided in Subpart C of this
20 ordinance, the criminal penalties provided in Subpart B of this ordinance
21 or other ordinances or statutes, other civil actions or remedies,
22 administrative proceedings against a license, or any one or more of them,
23 and may do so simultaneously or in succession.

24 § 11-1-1-9 CIVIL FINES.

- 25 (A) In addition to any other remedies available in this Ordinance or under the
26 common law, the Mayor's designee may impose a civil fine of \$500 per
27 day for any violation of this article.
- 28 (B) When the Mayor's designee imposes a civil fine for violations of this
29 article occurring on real property, the Mayor's designee shall issue Notice
30 directed to the owner of the subject property, their agent and/or
31 responsible person, and, where appropriate, to the occupant of the
32 subject property, as shown on the records of the Bernalillo County Clerk
33 and/or the Bernalillo County Assessor's Office. The Notice shall contain:

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- 1 (1) The street address and a legal description of the subject
- 2 property;
- 3 (2) A statement that the Mayor’s designee has found the subject
- 4 property to be in violation of this article;
- 5 (3) A concise description of the conditions found to render the
- 6 subject property a public nuisance under the provisions of this
- 7 code;
- 8 (4) The amount of the fine assessed;
- 9 (5) A statement that the fine must be paid in full within 30 days of
- 10 the date of the order or a lien may be placed upon the subject
- 11 property or any asset owned by the subject property’s owner
- 12 and that the City may seek remedies, including foreclosure, for
- 13 any unpaid liens;
- 14 (6) Instructions for how the fine can be paid;
- 15 (7) A statement that payment plans or waivers may be available if
- 16 the person can demonstrate hardship, low income or indigent
- 17 status; and
- 18 (8) A statement advising that any person having any title or legal
- 19 interest in the subject property may appeal from the notice of
- 20 civil fine to the Office of Administrative Hearings, provided the
- 21 appeal is made in writing as provided in this article, and filed
- 22 with the Office of the Administrative Hearings within 15 days
- 23 of service of notice of civil fine, and that failure to timely
- 24 appeal the notice of civil fine shall constitute a waiver of the
- 25 right to appeal.
- 26 (C) Method of service.
- 27 (1) Service of the Notice shall be made upon all persons entitled
- 28 thereto either personally or by mailing a copy of such notice
- 29 and order by certified mail, postage prepaid, return receipt
- 30 requested, to each such person and owner, responsible party
- 31 or identified agent at their address as shown on the records of
- 32 the Bernalillo County Assessor or as known to the Mayor’s
- 33 designee. If no address of any such person so appears or is

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1 known to the Mayor’s designee, then a copy of the notice of
2 civil fine shall be so mailed, addressed to such person, at the
3 address of the building involved in the proceedings and
4 posted thereon.

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

9 (D) Appeal. Any individual who has been assessed a civil fine issued
10 pursuant to this article may appeal that decision. The request for appeal
11 and the hearing shall comply with the procedures outlined in the
12 Independent Office of Hearings Ordinance, ROA 1994, §§ 2-7-8-1 to 2-7-8-
13 9.

14 § 11-1-1-10 ADMINISTRATIVE PROCEDURES FOR THE ABATEMENT OF
15 NUISANCES.

16 (A) In addition to any other remedies available in this Ordinance or under the
17 common law, the Mayor’s designee may request an administrative
18 hearing in order to obtain additional remedies needed to abate a public
19 nuisance occurring on real property. The action may be brought against
20 the property where the nuisance has occurred, any persons owning or
21 claiming any legal or equitable interest or right of possession in the
22 property, all tenants and occupants at the property, managers and
23 agents for any persons owning or claiming a legal or equitable interest in
24 the property, any persons committing, conducting, promoting, facilitating
25 or aiding the commission of a public nuisance, and any other persons
26 whose involvement may be necessary to abate the nuisance, prevent it
27 from recurring.

28 (B) To initiate an abatement action, the Mayor’s designee shall issue a Notice
29 of Public Nuisance and Intent to Cause Abatement to the property owner
30 or other responsible person of the nuisance violation(s) occurring on or
31 near the property in accordance with the procedures identified in ROA §
32 11-1-1-9(B).

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- 1 (1) The Notice shall identify the nuisance and the date of the
2 occurrence. and include a statement that if the nuisance is not
3 abated within fifteen (15) days, the City will request an
4 administrative hearing.
- 5 (2) The Mayor’s designee shall mail the Notice by certified mail,
6 postage prepaid, return receipt requested, to the owner(s) of
7 the real property and post the Notice at the main entrances to
8 the buildings or at some other prominent place on the real
9 property. The mailing of the notice shall be deemed sufficient
10 if mailed to the owner(s) and the holder(s) of the last recorded
11 deed of trust at the address(es) shown on the records of the
12 Bernalillo County Clerk and/or the Bernalillo County
13 Assessor’s Office.
- 14 (3) The Notice shall include instructions in the top five non-
15 English languages spoken in Albuquerque on how to obtain
16 additional information and/or language services.
- 17 (4) The Mayor’s designee is authorized to enter upon property for
18 the purpose of posting notice and to affix the notice in any
19 reasonable manner to any buildings and structures.
- 20 (5) The Mayor’s designee shall not be required to mail any notice
21 whenever he or she determines that any of the following
22 conditions exist:
- 23 (a) The public nuisance poses an imminent hazard;
24 (b) Notice could jeopardize a pending investigation of
25 criminal or public nuisance activity, confidential
26 informants, or other police activity; or
27 (c) Other emergency circumstances exist.
- 28 (6) It shall be unlawful for any person other than the Mayor’s
29 designee to remove any notice posted under the provisions of
30 this subsection.
- 31 (C) After providing the Notice required in § 11-1-1-10(B), the Mayor’s
32 designee may request an administrative hearing before the Independent
33 Hearing Office (“IHO”), which shall have authority to determine whether a

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- 1 public nuisance exists, order abatement of the nuisance, and impose
2 fines or other penalties. The hearing shall be conducted in accordance
3 with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7,
4 Part 8 and pursuant to the New Mexico Rules of Civil Procedure.
- 5 (D) If the Hearing Officer determines that a violation of this ordinance has
6 occurred, the hearing officer shall determine the remedies to be imposed.
7 The Hearing Officer may order any responsible individuals to:
- 8 a. Cease the activity causing the public nuisance;
9 b. Abate the nuisance;
10 c. Enter into a nuisance abatement agreement with the
11 City;
12 d. Permit the City to inspect the property to determine
13 compliance;
14 e. Close the business or building for a period of time not to
15 exceed thirty (30) days; and
16 f. Pay a civil fine not to exceed \$500 per violation per day.
- 17 (E) The Order shall state the determination of the hearing officer regarding
18 the alleged violations listed in the notice of administrative civil
19 enforcement and shall contain findings of fact and conclusions of law.
- 20 (F) Any party aggrieved by a final decision of the Hearing Officer may appeal
21 the decision to District Court within 30 days of the final order.
- 22 (G) The Mayor's Designee shall monitor compliance with the order. If the
23 Mayor's designee has reason to believe that any individual subject to the
24 order is not complying with the order, the Mayor's designee may seek
25 further relief before the IHO, commence a civil action in district court, or
26 refer the matter to the District Attorney for the commencement of criminal
27 proceedings.
- 28 (H) The IHO may retain jurisdiction to rescind or modify orders issued
29 pursuant to this section.
- 30 (I) Transfer of property ownership shall not terminate any order issued
31 pursuant to this section. An acquiring property owner shall be
32 responsible for compliance with any order or pending enforcement action
33 against a nuisance property or its prior owner.

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1 **§ 11-1-1-11 CIVIL ACTIONS**

- 2 (A) **In addition to any other remedies available in this Ordinance or under the**
3 **common law, the City may pursue a civil action to obtain any relief**
4 **necessary to abate a nuisance.**
- 5 (B) **Civil actions brought under this ordinance shall be filed by the City**
6 **Attorney for the City of Albuquerque. A private citizen, in the name of the**
7 **state, may also bring an action under this ordinance.**
- 8 (C) **A civil action brought under this ordinance shall be commenced by the**
9 **filing of a verified complaint or a complaint verified by an affidavit and a**
10 **motion for temporary restraining order in accordance with the New**
11 **Mexico Rules of Civil Procedure.**
- 12 (D) **The defendants to a civil action under this ordinance and the persons**
13 **liable for the remedies in this section may include the property itself, any**
14 **persons owning or claiming any legal or equitable interest or right of**
15 **possession in the property, all tenants and occupants at the property,**
16 **managers and agents for any persons owning or claiming a legal or**
17 **equitable interest in the property, any persons committing, conducting,**
18 **promoting, facilitating or aiding the commission of or flight from a public**
19 **nuisance, and any other persons whose involvement may be necessary to**
20 **abate the nuisance, prevent it from recurring, or to carry into effect the**
21 **court's orders for temporary restraining orders, closures, receiverships,**
22 **permanent injunctions, liens, sales and destruction. Any person holding**
23 **any legal or equitable interest or right of possession in the property who**
24 **has not been named as a defendant may intervene as a defendant.**
- 25 (E) **Notification before filing civil action or imposing civil fine.**
- 26 (1) **At least ten (10) calendar days before filing a civil action under**
27 **this ordinance involving any closure or receivership of real property or**
28 **imposing a civil fine, the Mayor's designee shall post a notice at the main**
29 **entrances to the buildings or at some other prominent place on the real**
30 **property. The Mayor's designee shall also mail a notice by certified mail,**
31 **return receipt requested, to the owner(s) of the real property and to the**
32 **holder(s) of the last deed of trust recorded on the real property. The mailing**
33 **of the notice shall be deemed sufficient if mailed to the owner(s) and the**

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1 holder(s) of the last recorded deed of trust at the address(es) shown on the
2 records of the Bernalillo County Clerk and/or the Bernalillo County
3 Assessor’s Office. The posted and mailed notices shall state that the real
4 property has been identified as a public nuisance and that a civil action
5 under this ordinance may be filed and a civil fine may be imposed. All
6 notices shall include instructions in the top five non-English languages
7 spoken in Albuquerque on how to obtain additional information and/or
8 language services.

9 (2) The Mayor’s designee is authorized to enter upon property for
10 the purpose of posting notice and to affix the notice in any reasonable
11 manner to any buildings and structures.

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

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

27 (4) It shall be unlawful for any person other than the Mayor’s
28 designee to remove any notice posted under the provisions of this
29 subsection.

30 § 11-1-1-12 RELOCATION

31 (A) Whenever a civil action is filed that involves a building occupied by a
32 resident the following shall apply.

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

24 (2) In addition to the notice requirements of § 11-1-1-11(E) ROA
25 1994, at the time the notice that the city has filed a civil action under this
26 Ordinance, notification shall be given to the owner that the owner may be
27 required to pay the relocation costs of any displaced residents. The owner
28 shall also be served with a copy of this Ordinance.

29 (3) At the time that a notice is served on the owner of the
30 property, a notice in substantially the following form shall be served on
31 those residents known by name to the Mayor’s designee. Such notice shall
32 be served by personal service or by mailing a copy of such notice by
33 certified mail, postage prepaid, return receipt requested. As to residents

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1 unknown by name to the Mayor’s designee, service may be accomplished
2 by posting such notice at the main entrances or at some other prominent
3 place on or within the residential building. The notice shall be written in
4 both English and Spanish. The notice shall be provided to the relocation
5 agency on or before the day the notice to the residents is served or posted.

6 **NOTICE TO RESIDENTS**
7 **YOU MAY BE REQUIRED TO MOVE**

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

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

12 The Court may order the building to be closed.

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

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

20 Phone Number:

21 Address:

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

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

- 31 i. The residents had a rental agreement at the time the notice
32 was served on the residents;

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- ii. A court had issued an eviction order to the residents prior to the date the notice was served on the residents;
- iii. The residents caused or substantially contributed to the conditions that were the basis of the notice to vacate;
- iv. The conditions that were the basis for the notice to vacate were caused by fire, flood or other natural disasters;
- v. The failure to meet the requirements of this code was due to the willful or negligent acts or omissions of the owner;
- vi. The resident was in default for non-payment of rent;
- vii. The basis of the notice to vacate is for a condition caused by the resident's or any third party's illegal conduct without the owner's prior knowledge; or
- viii. For an owner occupant of a mobile home who is renting a lot or parcel for use as a site for the location of the mobile home, whether the requirement to vacate was caused by actions outside the control of the resident.

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

- (a) The residents were parties to a rental agreement at the time the notice was served on the residents whose term had not expired;
- (b) The residents had not been served with a valid notice of default under the rental agreement which would have entitled the owner to evict the resident;
- (c) The residents did not cause or substantially contribute to the conditions that were the basis of the notice to vacate;
- (d) The conditions that were the basis for the notice to vacate were not caused by fire, flood or other natural disasters;

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- 1 (e) The failure to meet the requirements of this code was due
- 2 substantially to the willful or grossly negligent acts or
- 3 omissions of the 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 was not
- 6 caused by the resident's or any third party's illegal conduct
- 7 without the owner's prior knowledge; and
- 8 (h) For an owner occupant of a mobile home who is renting a lot
- 9 or parcel for use as a site for the location of the mobile home,
- 10 the requirement to vacate was not caused by actions outside
- 11 the control of the 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

15 be entitled to appeal the assessment of relocation costs by the relocation

16 agency pursuant to the appeal provisions of this code. Such appeal shall

17 be filed 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

19 stay the relocation process.

20 (8) The Mayor's designee may promulgate regulations governing

21 the administration of this section, including eligibility for relocation costs,

22 the amount and method of payment of relocation costs, the criteria

23 replacement 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

26 be construed to change the obligations and rights of owners and residents

27 as required in the Uniform Owner- Resident Relations Act, Section 47-8-1 et

28 seq. NMSA 1978.

29 (10) The relocation agency shall provide assistance in finding

30 alternative housing for residents who are displaced and qualify for

31 relocation 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

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

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

21 § 11-1-1-14 LIEN FOR JUDGMENTS.

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

29 § 11-1-1-15 EMERGENCY ABATEMENT.

30 (A) Notwithstanding any other provision in this code, if the conditions at a
31 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

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1 remove the hazard and may include disconnection of utilities, securing of
2 the structures, installation of fencing or emergency cleaning of the
3 property to 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 all
7 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.**

10 This subpart shall be known and may be cited as the “Cleanup of Clandestine
11 Drug Laboratory Sites Ordinance.”

12 **§ 11-1-2-2 FINDINGS AND INTENT.**

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

25 **§ 11-1-2-3 DEFINITIONS.**

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

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

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

1 defined in Section 30-20A-2D NMSA 1978, and specifically includes
2 Albuquerque Police Department nuisance abatement inspectors.
3 LSD (LYSERGIC ACID DIETHYLAMIDE). This term has the same meaning
4 prescribed in Section 30-31-6 NMSA 1978 and includes any of the precursor
5 chemicals, regulated chemicals, other substances or equipment used in the
6 unlawful manufacture of LSD and any derivatives thereof.
7 METHAMPHETAMINE. This term has the same meaning prescribed in Section
8 30-31-7 NMSA 1978 and includes any of the precursor chemicals, regulated
9 chemicals, other substances or equipment used in the unlawful manufacture
10 of methamphetamine and any derivatives thereof.
11 OWNER. Any person, firm, corporation or other entity that owns, in whole or
12 in part, the property subject to this subpart.
13 PROPERTY. Real or personal property, including the area within a structure
14 and the area that surrounds a structure and that is within the land boundary or
15 property lines of any of the following:

- 16 (1) Property that can be used for residential purposes or is
17 occupied by people for any length of time for any purpose.
18 (2) Property that is governed by the Uniform Owner-Resident
19 Relations Act, Sections 47-8-1 et seq. NMSA 1978, or the Mobile Home Park
20 Act, Sections 47-10-2 et seq. NMSA 1978.
21 (3) A mobile home as defined in Section 47-10-2 NMSA 1978.
22 (4) A recreational vehicle as defined in Section 66-1-4.15 NMSA
23 1978 and for purposes of this subpart, "recreational vehicle" shall also
24 include a recreational travel trailer as defined in Section 66-1-4.15 NMSA
25 1978.
26 (5) A vehicle, as defined in § 8-5-2-1 ROA 1994.

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

- 31 (1) If gross contamination is removed from a house, mobile home
32 or recreational vehicle and the notice of removal is posted for the entire
33 house, mobile home or recreational vehicle, then the entire house, mobile

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1 home or recreational vehicle, not just the room or rooms in which the gross
2 contamination is found shall be deemed the residually contaminated
3 portion of the property.

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

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

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

17 § 11-1-2-4 DECLARATION OF PUBLIC NUISANCE.

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

21 § 11-1-2-5 CLANDESTINE DRUG LABORATORIES.

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

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

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1 on site at the time of delivery and to the on-site park landlord if the park
2 landlord is on site at the time of delivery.

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

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

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

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

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

30 (6) After the law enforcement officer removes all persons
31 pursuant to subsection (A)(5) of this section, the law enforcement officer
32 shall affix the notice of removal in a conspicuous place on the property or,

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

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

7 (B) Notice. The notice of removal shall be in writing and shall contain all of
8 the following:

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

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

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

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

24 (5) The address or location of the property, including the
25 identification of any dwelling unit, room number, apartment number or
26 vehicle identification number.

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

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

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

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

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

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

15 (C) Remediation by owner. The owner of the property shall remediate the
16 residually contaminated portion of the property by retaining an industrial
17 or environmental hygienist firm to pre-test the property to determine the
18 extent of the contamination and the nature of the required remediation.
19 When the industrial or environmental hygienist firm determines that
20 remediation is required, the owner shall retain a drug laboratory site
21 remediation firm to conduct the remediation. The industrial or
22 environmental hygienist firm and the drug laboratory site remediation
23 firm shall be separate and unaffiliated business entities. The owner shall
24 retain the industrial or environmental hygienist firm and the drug
25 laboratory site remediation firm within 30 days of the day of delivery of
26 personal service of the notice of removal or within 35 days of the date the
27 notice of removal is mailed by certified mail or posted on the property.
28 Remediation shall be completed in accordance with the standards for
29 remediation of residual contamination adopted by the Albuquerque Police
30 Department and the City Environmental Health Department within 60 days
31 of the day of delivery of personal service of notice to the owner or within
32 65 days of the date notice is mailed by certified mail to the owner or for

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1 such other period of time that is approved in writing by the Albuquerque
2 Police Department.
3 (D) Remediation procedures. An industrial or environmental hygienist firm
4 and the drug laboratory site remediation firm retained to remediate the
5 residually contaminated portion of any property pursuant to this section
6 shall comply with the best practices and standards for remediation of
7 residual contamination adopted by the Albuquerque Police Department
8 and the City Environmental Health Department. The industrial or
9 environmental hygienist firm shall notify the owner whenever the firm
10 determines that any structure requires remediation of contamination as
11 required in this section. The owner shall send such notification of
12 required remediation of contamination to Albuquerque Police
13 Department, the City Environmental Health Department and the city's
14 Chief Building Official. Within one business day after the remediation is
15 complete, the drug laboratory site remediation firm shall notify the
16 Albuquerque Police Department, the City Environmental Health
17 Department and the industrial or environmental hygienist firm that the
18 property is ready for final inspection. After inspection by the industrial or
19 environmental hygienist firm and approval by the Albuquerque Police
20 Department and the City Environmental Health Department, the industrial
21 or environmental hygienist firm shall issue a final clearance document
22 certifying that remediation of the residually contaminated portion of the
23 property was completed pursuant to the standards for remediation of
24 residual contamination and shall deliver the certification document or
25 send the document by certified mail to the owner. The owner shall
26 provide a copy of the certification of completed remediation to each
27 person and entity listed in subsection (A) (4) of this section, the city's
28 Chief Building Official and the law enforcement agency that issued the
29 notice under that subsection. After the final clearance document has been
30 issued, both of the following apply:
31 (1) The owner, landlord, lien holder or manager of the property is
32 not required to comply with subsection (G) of this section.
33 (2) Any person may use, enter, occupy, rent or sell the property.

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- 1 It shall be the responsibility of the owner of the property to file with the County
2 Assessor the document stating that the residually contaminated portion of the
3 property has been remediated. The owner shall also be responsible for the
4 costs associated with filing. The issuance of the document certifying that
5 remediation of the residually contaminated portion of the property was
6 completed pursuant to the standards for remediation of residual
7 contamination shall be a prerequisite for a certificate of occupancy or any city
8 required building inspection and shall not be in lieu of a certificate of
9 occupancy or any city required building inspection.
- 10 (E) Contaminated vehicles. If gross contamination is removed from a vehicle,
11 the notice of removal required in subsection (B) of this section shall be
12 sent by certified mail to the owner of record and lien holder of record, if
13 any exists. Impounded vehicles containing residual contamination shall
14 not be released to the owner or lien holder until the remediation has been
15 completed and paid for by the owner or lien holder. Remediation shall be
16 accomplished by following the same procedures as set forth in
17 subsection (D) of this section. Remediation costs as defined in
18 subsection (J) of this section shall be in addition to any other towing,
19 storage, or other impoundment fees.
- 20 (F) Notice to buyers and occupants. The following notice requirements apply
21 until the remediation is complete as provided in subsection (D) of this
22 section:
- 23 (1) Within five days after a buyer signs a contract to purchase
24 property, the owner shall notify the buyer in writing that methamphetamine,
25 ecstasy, or any other controlled substance was manufactured on such
26 property or that an arrest, as described in subsection (A) of this section,
27 was made. The buyer shall acknowledge receipt of the notice. A buyer may
28 cancel the purchase contract within five days after receiving the notice
29 without liability. If the owner does not comply with this paragraph, the
30 buyer may void the purchase contract.
- 31 (2) Landlords and their agents shall provide written notice to all
32 prospective tenants for dwelling units that the dwelling unit was the
33 subject of a notice of removal, as described in subsections (A) and (B) of

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1 this section, that methamphetamine, ecstasy, or any other controlled
2 substance was manufactured on the property or that an arrest, as
3 described in subsection (A) of this section, was made. The tenant shall
4 acknowledge receipt of the notice before taking possession of the property
5 or before signing a rental agreement for the property. The notice shall be
6 attached to the rental agreement. If the landlord or their agent does not
7 comply with this paragraph, the tenant may void the rental agreement. For
8 purposes of this paragraph, “dwelling unit” shall include but not be limited
9 to mobile homes and recreational vehicles.

10 (3) Before a customer occupies a room that was the subject of the
11 notice of removal, as described in subsection (A) of this section, the owner
12 or manager shall notify the customer in writing the room was the subject of
13 a notice of removal as described in subsection (A) and (B) of this section,
14 that methamphetamine, ecstasy, LSD or any other controlled substance
15 was manufactured in the room or that an arrest, as described in subsection
16 (A) of this section, was made. The customer shall acknowledge receipt of
17 the notice before taking possession of the room and before signing a room
18 rental agreement. If the owner or manager does not comply with this
19 paragraph, the customer may void the agreement.

20 (4) Owners are required to notify all agents selling, leasing or
21 renting property that is the subject of a notice of removal that such
22 property is the subject of a notice of removal. When a sales, leasing or
23 rental agent is notified that the property is the subject of a notice of
24 removal, such agent shall notify in writing all prospective buyers, tenants
25 or other occupants about the notice of removal and manufacture of
26 methamphetamine, ecstasy, LSD or any other controlled substance on the
27 property or that an arrest, as described in subsection (A) of this section,
28 was made on the property. Notice shall be made in the same manner as
29 required of the owner in this subsection (G).

30 (5) When a law enforcement officer has ordered the removal of all
31 persons from property pursuant to § 11-1-1-44(A)(5), owners, landlords and
32 their agents shall continue to be subject to the requirement to not permit

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1 people from occupying such property. Compliance with this subsection
2 shall not eliminate the requirement that the property not be occupied.
3 (G) Mobile home or recreational vehicle space rental parks. If a mobile home
4 or recreational vehicle in a space rental park contains a clandestine drug
5 laboratory, the landlord of the park, on receipt of a notice pursuant to
6 subsection (A) of this section, shall notify the owner and lienholder of
7 record of the unit to remove the unit from the park within 30 days. This
8 provision shall not apply when the owner of the contaminated mobile
9 home or recreational vehicle is also the owner of the mobile home or
10 recreational vehicle space rental park in which such contaminated mobile
11 home or recreational vehicle is located. If the unit is not removed within
12 30 days, the landlord of the park shall remediate the contamination
13 following the requirements set forth in subsections (C) and (D) of this
14 section.
15 (H) Restitution to owner. A person who operates a clandestine drug
16 laboratory and who is not the owner of the property shall pay restitution
17 to the owner of the property for all costs that the owner incurred to
18 remediate the property and, in the instance of a mobile home or
19 recreational vehicle, the cost incurred by the owner of a space rental park
20 for moving and/or remediating such property.
21 (I) Remediation by city. If an owner of property, a vehicle owner, a vehicle
22 lien holder or an owner of a mobile home or recreational vehicle space
23 park, as described under subsection (G) of this section, fails to comply
24 with the remediation of the residually contaminated property or portion of
25 the property as required in this section, the city may remediate the
26 residually contaminated portion of the property or seek a court order
27 requiring the owner to remediate in the manner required in this section. If
28 the city is unable to locate the owner within ten days after the issuance of
29 the Certificate of Substandard Property, the city may proceed with
30 remediation. If the city remediates the contamination, the owner shall pay
31 to the city all costs related to such remediation. If the owner fails to pay
32 the city for its costs of remediation, the city shall be entitled to file a lien
33 against such property for the costs related to the remediation and bring

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1 legal action against the owner for such remediation costs. Remediation
2 costs shall include the expense for posting, physical security of the
3 contaminated site, notification of affected people, businesses or any
4 other entity, expenses related to the recovery of cost, laboratory fees,
5 cleanup services, costs for testing for residual contamination, removal
6 costs, and cost incurred for an industrial or environmental hygienist firm
7 and a drug laboratory site remediation firm. When a contaminated vehicle
8 is impounded, the vehicle shall not be released to the owner or a lien
9 holder until remediation is completed and paid by the owner or lien holder
10 and impoundment fees are paid by the owner or lien holder. Remediation
11 costs for vehicles in which gross contamination is found shall include the
12 costs for testing for residual contamination regardless of whether
13 residual contamination is actually required to be remediated.
14 Impoundment fees shall include those fees defined as impoundment
15 charges in § 8-5-2-1 ROA 1994. The city or its contractors may remove
16 property as part of its remediation effort.

17 PART 3: DRUG FREE ZONES

18 § 11-1-3-1 INTENT.

19 The public purpose of §§ 11-1-3-1 et seq. is to decrease the number of
20 occurrences of the illegal sale and purchase of drugs or imitation drugs in
21 areas in the city where that number is significantly greater than in other areas
22 of the city, and to protect the health, safety and welfare of citizens using the
23 public right-of-way in such areas.

24 § 11-1-3-2 SHORT TITLE.

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

26 § 11-1-3-3 FINDINGS.

27 The City Council makes the following findings:

- 28 (A) Certain areas of the city have a significantly higher incidence of conduct
29 associated with trafficking in narcotics and other controlled substances
30 than other areas of the city. This concentration of narcotics activity
31 contributes to the degradation of those areas and also adversely affects
32 the overall quality of life for those areas' residents, businesses, and
33 visitors.

- 1 (B) Many persons arrested in Albuquerque for delivering controlled
2 substances or imitation controlled substances frequently return to the
3 same location or general vicinity of their arrest because the area has
4 proven to be a lucrative place for trafficking in controlled substances.
- 5 (C) After arresting drug dealers, police officers frequently encounter the
6 same persons shortly thereafter in the same area, engaging in the same
7 criminal activity.
- 8 (D) The City has a substantial and compelling interest in restoring the quality
9 of life and protecting the health, safety, and welfare of citizens using the
10 public right-of-way in such areas. The government has a substantial and
11 compelling interest in allowing the public to use and enjoy the facilities in
12 such areas without interference arising from sales of drugs or imitation
13 drugs.
- 14 (E) The processes presently available do not adequately control this type of
15 activity and the detrimental effects on the areas where this activity
16 occurs.
- 17 (F) Individuals have a significant private interest in being able to travel and
18 associate freely in all areas of the City. However, the public interest in
19 preventing the harmful effects of drug dealing is so great that it justifies
20 excluding the drug sellers for 90 days from an impacted area in which
21 they have sold drugs or imitation drugs.
- 22 (G) The City's health, safety and welfare would best be served by temporarily
23 excluding from impacted areas those persons who are arrested therein
24 for the unlawful delivery of controlled substances or of imitation
25 controlled substances.
- 26 (H) To minimize the likelihood of erroneous deprivation, the city should
27 provide persons who are arrested therein for a crime listed in § 11-1-2-6
28 herein an opportunity to quickly challenge their exclusions and have a
29 timely hearing before a hearing officer before their exclusion from the
30 drug free zone becomes effective.
- 31 (I) To ensure that health care and other legitimate needs are met, variances
32 should be available to those individuals with compelling need to enter the
33 drug free zone to preserve their health or well-being.

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- 1 § 11-1-3-4 DRUG FREE ZONES; CRITERIA.
- 2 Drug free zones are those areas where the number of arrests for conduct
- 3 prohibited by Sections 3-31-20 through 25.1 NMSA 1978, Sections 3-31A-4
- 4 through 6 NMSA 1978, or § 12-4-16 of this code of ordinances, for the 24
- 5 month period preceding the original designation is significantly higher than
- 6 that for other similarly sized areas of the city.
- 7 § 11-1-3-5 DESIGNATION OF DRUG FREE ZONE.
- 8 If the City Council designates an area meeting the criteria of § 11-1-2-4 to be a
- 9 drug free zone, it shall do so by ordinance, and the designation shall be valid
- 10 for an initial period of two years. Thereafter, the Council may extend the time
- 11 of the designation as it deems appropriate, but in no event shall the total be
- 12 more than ten years. The City Council may also remove the designation in the
- 13 event it deems that appropriate. The removal of the designation shall be by
- 14 ordinance.
- 15 § 11-1-3-6 PERSONS SUBJECT TO EXCLUSION.
- 16 (A) A person is subject to exclusion for a period of 90 days from the public
- 17 streets, sidewalks, and other public ways in all drug free zones
- 18 designated in § 11-1-2-9 herein if that person has been arrested or
- 19 otherwise taken into custody within any drug free zone for any of the
- 20 following crimes:
- 21 (1) Unlawful possession of a controlled substance, in violation of
- 22 Section 3-31-23 NMSA 1978;
- 23 (2) Unlawful distribution of a controlled substance, in violation of
- 24 Section 3-31-22 NMSA 1978;
- 25 (3) Trafficking a controlled substance, in violation of Section 30-31-20
- 26 NMSA 1978;
- 27 (4) Distributing a controlled substance to a minor, in violation of Section
- 28 30-31-21 NMSA 1978;
- 29 (5) Unlawful manufacture, distribution or possession of an imitation
- 30 controlled substance, in violation of Section 30-31A-4 NMSA 1978 or
- 31 § 12-4-16 of this code of ordinances; or

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

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

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

10 § 11-1-3-7 AUTHORITY TO ISSUE EXCLUSION NOTICES.

11 The Mayor or the Mayor’s designee shall be responsible for the public streets,
12 sidewalks, and public ways in drug free zones for the purpose of issuing
13 exclusion notices in accordance with §§ 11-1-2-1 et seq. The Mayor may
14 authorize the Police Department to issue exclusion notices in accordance with
15 §§ 11-1-2-1 et seq.

16 § 11-1-3-8 NOTICE OF EXCLUSION.

17 At the time a person is arrested within a drug free zone for any of the crimes
18 listed in § 11-1-2-6, the officer making such arrest may deliver to the person a
19 written notice excluding the person from all drug free zones. The notice shall
20 specify the areas designated as drug free zones from which that person is
21 excluded and contain information concerning the right to appeal the exclusion
22 notice to the hearing officer. The person to whom the exclusion notice is
23 issued shall sign a written acknowledgment of receipt of the exclusion notice.
24 If that person refuses to do so, the arresting officer shall make a written record
25 of the refusal.

26 § 11-1-3-9 APPEAL AND VARIANCE.

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

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

- 1 (2) The exclusion shall not take effect during the pendency of the
2 appeal. If no appeal is taken, the exclusion shall take effect on the
3 sixth calendar day after the notice's issuance.
- 4 (3) The City shall have the burden to show by a preponderance of
5 evidence that the exclusion is based on conduct which constitutes
6 any of the crimes enumerated in § 11-1-2-6 herein. Copies of
7 documents in its control and which are intended to be used by the
8 city at the hearing shall be made available to the appellant at least
9 two days prior to the hearing.
- 10 (4) The decision resulting from the hearing may be appealed to the state
11 district court.
- 12 (B)
- 13 (1) A determination by a court having jurisdiction of the matter that the
14 officer who issued the exclusion notice, at that time had probable
15 cause to arrest the person to whom the exclusion notice was issued
16 for violation of one or more crimes enumerated in § 11-1-2-6 herein,
17 shall be prima facie evidence that the exclusion was based on
18 conduct proscribed by those statutes.
- 19 (2) Variances from an exclusion may be granted at any time during the
20 exclusion period by either the Mayor or Mayor's designate or by a
21 social service agency which provides services within the drug free
22 zone for which the variance is granted, only for reasons relating to
23 the health or welfare, or well-being of the person excluded. The
24 Mayor shall grant a variance to any person who can establish that he
25 or she:
- 26 (a) Was a bona fide resident of the drug free zone prior to receipt
27 of the exclusion notice; or
- 28 (b) Was a bona fide owner, principal or employee of a place of
29 employment located in one of the designated drug free zones.
- 30 (c) Must conduct official business with the city, county, state or
31 federal governments, including the metropolitan, state and
32 federal courts, in a drug free zone.

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- 1 (d) Desires to attend a house of worship located in one of the
- 2 designated drug free zones.
- 3 (3) The variance will allow access only to the designated drug free zone
- 4 specified in the variance.
- 5 (4) Only those social service agencies which have written rules and
- 6 regulations prohibiting the use or sale of controlled substances by
- 7 their clients and which have entered into a written agreement with
- 8 the city concerning the applicability and enforceability of those rules
- 9 are eligible to grant variances.
- 10 (5) All variances shall be in writing, for a specific period of time and only
- 11 to accommodate a specific purpose, all of which shall be stated on
- 12 the variance. The person shall keep the variance on his or her person
- 13 at all times the person is within the specific drug free zone for which
- 14 the variance was granted. In the event a person having a variance is
- 15 found to be outside the scope of the variance's terms, that person is
- 16 thereupon subject to immediate arrest for criminal trespass pursuant
- 17 to § 12-2-3 of this code of ordinances.
- 18 (6) In the event a person holding a variance is arrested for conduct
- 19 prohibited by state or federal law involving controlled substances,
- 20 the variance shall immediately become void and that person shall be
- 21 ineligible for any new variances for a period of one year from the
- 22 date of the arrest.

§ 11-1-3-10 LISTING OF DRUG FREE ZONES.

The following areas are designated as drug free zones:

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

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- 1 Topeka and Santa Fe Railroad Right of Way, then north along the railroad
2 right of way to the intersection of Bridge Blvd. SW and the railroad right
3 of way, then proceeds west along Bridge Blvd. SW to the intersection of
4 Bridge Blvd. and 8th Street SW, then proceeds north along 8th Street SW
5 to the intersection of 8th Street and Coal Avenue SW, then proceeds west
6 along Coal Avenue SW to the intersection of Coal Avenue and 10th Street
7 SW, then proceeds north along 10th Street to the intersection of 10th
8 Street and Copper NW and Central NW, then proceeds northwest along
9 Central NW to the intersection of Central Avenue and 12th Street NW,
10 then proceeds north along 12th Street to the point of origin at the
11 intersection of 12th Street NW and Lomas Blvd. NW, including the public
12 right-of-way.
- 13 (B) The area which begins at the point of the intersection of Copper NE and
14 Eubank NE and proceeds south to the intersection of Eubank NE and
15 Central NE, then proceeds west to the intersection of Central and Zuni SE,
16 then proceeds west to the intersection of Zuni and Wyoming SE, then
17 proceeds south to the municipal limits and follows the municipal limits
18 westerly to the intersection of Ridgecrest and San Mateo SE, then
19 proceeds north to the intersection of San Mateo and Zuni SE, then
20 proceeds west along Zuni, then Lead SE to the intersection of Lead and
21 Carlisle SE, then proceeds north to the intersection of Central and
22 Carlisle NE, then proceeds east to the intersection of Central and
23 Louisiana NE, then proceeds north to the intersection of Louisiana and
24 Lomas, NE, then proceeds east to the intersection of Lomas and
25 Wyoming NE, then proceeds south to the intersection of Wyoming and
26 Copper NE, then proceeds east to the point of origin at the intersection of
27 Copper NE and Eubank NE, including the public right-of-way. The area
28 which falls within a line which begins at the intersection of Rio Grande
29 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
32 boundary, then proceeds easterly and southeasterly along the municipal
33 boundary to the Duranes Ditch, then proceeds southerly along the

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

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

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