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SPONSORED BY:

2 ADOPTING THE PIGEON NUISANCE ABATEMENT ORDINANCE TO PROHIBIT
3 THE FEEDING AND HARBORING OF FERAL PIGEONS IN ALBUQUERQUE;
4 ESTABLISHING A COMPLAINT PROCESS REGARDING PIGEON NUISANCE;
5 PROVIDING FOR THE CLEAN UP OF BUILDINGS AFFECTED BY PIGEON
6 INFESTATION; PROVIDING FOR AN ADMINISTRATIVE HEARING PROCESS;
7 AND PROVIDING FOR ASSESSMENT OF PENALTIES.

10 SECTION 1. FINDINGS AND INTENT.

24 **SECTION 2. SHORT TITLE.** This Ordinance shall be referred to as the
25 **Pigeon Nuisance Abatement Ordinance** and may sometimes be referred to
26 **herein as “this Ordinance.”**

1 **SECTION 3. DEFINITIONS.** For the purpose of this ordinance, the following
2 definitions shall apply unless the context clearly indicates or requires a
3 different meaning.

4 **BUILDING.** Any business, residential structure, and non-business building
5 or structure.

6 **FEEDING.** Providing food, either purposely or through negligence, to
7 pigeons. Food may include, but is not limited to grain, seed, greens,
8 breadcrumbs and other miscellaneous food scraps, including garbage not
9 properly disposed of or contained.

10 **GARBAGE.** The putrescible animal and vegetable wastes resulting from
11 the handling, processing, preparing, cooking, or serving of food.

12 **INFESTATION.** The presence of pigeons of such kind or in such numbers
13 as to create a potential health hazard or nuisance.

14 **MAYOR.** The Mayor or his designated representative.

15 **OCCUPANT.** The individual, partnership, or corporation that has the use of
16 or occupies any building or a fraction thereof, whether the actual owner or
17 tenant of said building. In the case of a vacant building or any vacant portion
18 of a building lot, the owner, lessee, agent or custodian shall have the
19 responsibilities of an occupant.

20 **OWNER.** The actual owner of the building, lot, whether individual,
21 partnership or corporation. In the case of a leased building with a clause in
22 the lease specifying that the lessee is responsible for maintenance and repair,
23 the lessee will be considered in such cases as the owner for the purpose of
24 this article.

25 **PERSON.** An individual, partnership, association, syndicate, company,
26 firm, trust, corporation, government corporation, department, bureau, agency,
27 or any entity recognized by law.

28 **PIGEON.** The common pigeon, *Columba livia*, also known as the Rock
29 Dove or Rock Pigeon. For the purposes of this ordinance, “pigeon” refers to
30 any wild state (feral) pigeon, and does not include domestic pigeons used for
31 recreation or show.

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1 **PIGEON HARBORAGE.** Any condition which provides shelter or protection
2 for pigeons; thus, favoring their multiplication and continued existence in,
3 under, outside a structure or premise.

4 **PIGEON PROOFING.** A form of construction to prevent the ingress of
5 pigeons into or under buildings or structures from the exterior. It consists
6 essentially of the closing of all openings in the exterior walls, roof and other
7 structures that may be reached by pigeons with materials or other types of
8 pigeon proofing methods approved by the Mayor.

9 **SECTION 4. FEEDING OF FERAL PIGEONS PROHIBITED.**

10 **(A)** It shall be unlawful for any person to feed, offer food to, or through
11 negligence allow the feeding of feral pigeons on any public or private property
12 within Albuquerque City limits. The feeding of feral pigeons constitutes a
13 pigeon nuisance.

14 **(B)** It shall be unlawful to permit or allow the placement or discard of
15 food, food by-products, vegetables, garbage or animal food of any kind in a
16 manner that when it results in the lingering, roosting and/or congregating of
17 feral pigeons, constitutes a pigeon nuisance.

18 **(C)** This prohibition does not extend to domesticated birds or show
19 pigeons that are kept at all times in cages.

20 **(D)** This prohibition does not extend to bird seed set out in bird feeders
21 of a type that discourages use by pigeons, provided that the seed does not
22 attract significant numbers of pigeons or create conditions that constitute a
23 pigeon nuisance.

24 **SECTION 5. OTHER ACTS PROHIBITED.**

25 **(A)** No person shall create or foster any condition or allow any condition to
26 exist or continue which in any way harbors a number of feral pigeons or
27 results in an infestation of feral pigeons. Pigeon harborages constitute a
28 pigeon nuisance.

29 No person shall allow to accumulate, to a degree that may be harmful to the
30 public health and welfare, pigeon excrement, nesting materials, pigeon
31 carcasses and other pigeon related detritus on property that is under the
32 person's ownership or control. Pigeon related waste materials constitute a
33 pigeon nuisance.

1 **SECTION 6. PIGEON NUISANCE.**

2 **(A) A pigeon nuisance may consist of, but is not limited to, the**
3 **excessive congregation of feeding or roosting pigeons, especially when such**
4 **congregation of pigeons result in accumulation of pigeon droppings in, on or**
5 **around property or premises. Whenever an owner or occupant of any**
6 **property in the vicinity of a premises where excessive numbers of pigeons are**
7 **feeding or roosting or nesting, the owner or occupant may make a complaint**
8 **to the Department of a pigeon nuisance. The Mayor or his designated agent**
9 **will investigate all complaints of pigeon nuisances.**

10 **(B) If the Mayor determines that a pigeon nuisance resulting from the**
11 **feeding of pigeons exists, the Mayor may order the owner or manager of the**
12 **premises where feeding is occurring to cease and desist feral pigeon feeding**
13 **and to remove all feed, feeding equipment and sources of food and to make**
14 **the premises reasonably pigeon-proof. Other pigeon-proofing measures may**
15 **include removal of, or proper covering of, trash or trash containers serving as**
16 **a food source for pigeons. Pigeon nuisance abatement may include a**
17 **temporary cessation of bird feeding of any kind until such time as the pigeons**
18 **have ceased to flock to the premises.**

19 **(C) If the Mayor finds a pigeon nuisance resulting from the existence of**
20 **pigeon harborages, the Mayor may order the owner or manager of the**
21 **premises harboring pigeons to cover openings with hardware cloth or other**
22 **suitable material for preventing pigeons from entering in or upon the**
23 **premises.**

24 **(D) If the Mayor finds a pigeon nuisance resulting from the accumulation**
25 **of pigeon related waste materials, the Mayor may order the owner or manager**
26 **of the premises to remove all waste in a manner that protects human health**
27 **and does not create polluted water that leaves the property contaminated by**
28 **the waste.**

29 **(E) If the Mayor or his designated agent determine that an owner or**
30 **manager of a premise on which a pigeon nuisance exists has failed to abate**
31 **the pigeon nuisance as ordered, the Mayor or his designated agent may**
32 **decide that the premises constitute a public nuisance subject to enforcement**

1 through the Nuisance Abatement Ordinance, Section 11-1-1-1 et. Seq. ROA
2 1994.

3 (F) If the Mayor or his designated agent finds a pigeon nuisance that is so
4 extensive as to create a public health threat in that imminent harm is
5 reasonably understood to be possible, the Mayor or his designated agent may
6 decide that the premises constitute a public nuisance subject to enforcement
7 through the Nuisance Abatement Ordinance, Section 11-1-1-1 et. Seq. ROA
8 1994.

9 **SECTION 7. INSPECTION OF BUILDINGS, PREMISES AND VACANT LOTS.**

10 The Mayor or his designated agent is authorized to make such inspections
11 of buildings, lots, and premises, as he deems necessary to investigate and
12 abate pigeon nuisances, infestations or harborages. For the purpose of
13 making such inspections, the Mayor is authorized to enter, examine, or survey
14 at all reasonable times. Such entry shall be made in a manner as to cause the
15 least possible inconvenience to the person in control, and the Mayor shall
16 obtain an order for this purpose from a court of competent jurisdiction in the
17 event entry is denied or resisted.

18 **SECTION 8. ENFORCEMENT, SERVING OF NOTICES, AND ORDERS.**

19 Whenever it appears to the Mayor or his designated agent that a pigeon
20 nuisance exists, he shall issue and cause to be served on the person in
21 control, a written notice of the inspection stating the findings and specifying
22 remedial measures and a reasonable amount of time for abatement. If after
23 such reasonable time has elapsed, the Mayor determines that such condition
24 has not been abated the person in control shall be deemed to be in violation of
25 the provisions of this ordinance.

26 **SECTION 9. PENALTY.**

27 If a person has failed to remedy any condition found by the Mayor or his
28 designated agent to be a pigeon nuisance in the reasonable amount of time for
29 abatement set by the Department, the Department may assess a civil penalty
30 not to exceed \$100 for each day the violation remained unabated.

31 **SECTION 10. APPEAL PROCEDURE.**

32 The owner or occupant may appeal within seven calendar days of the date
33 of service of the notice of inspection findings. Such request shall be made in

1 writing and filed with the Independent Office of Administrative Hearings. The
2 appeal shall identify the property and state the grounds for appeal together
3 with all material facts in support thereof. A filing fee of \$50 shall accompany
4 each appeal application. When a hearing is requested the Hearing Officer
5 shall send written notice by certified mail, return receipt requested, to the
6 owner of the time and place of the hearing. At the hearing the owner shall
7 have the right to present evidence as to the alleged facts upon which the
8 Mayor based the determination of the need for nuisance abatement. The
9 Hearing Officer shall, following the hearing, issue a written decision. The
10 Hearing Office may uphold or dismiss the violations and may uphold, modify,
11 or dismiss any penalty set. If the decision is that this article has been violated,
12 the decision shall set forth the time within which abatement shall be
13 completed by the owner.

14 **SECTION 11. ADDITIONAL REMEDIES**

15 Nothing in this section shall be construed to preclude the City from
16 seeking any other remedy available at law or at equity.

17 **SECTION 12. SEVERABILITY CLAUSE.**

18 If any section, paragraph, sentence, clause, word or phrase of this
19 Ordinance is for any reason held to be invalid or unenforceable by any court
20 of competent jurisdiction, such decision shall not affect the validity of the
21 remaining provisions of this Ordinance. Without any limitation on what is
22 stated in this Paragraph, Sections 4 and 5 above stand alone and are
23 independent. The Council hereby declares that it would have passed this
24 Ordinance and each section, paragraph, sentence, clause, word or phrase
25 thereof irrespective of any provision being declared unconstitutional or
26 otherwise invalid.

27 **SECTION 13. COMPILATION.** This Ordinance shall be incorporated in and
28 made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

29 **SECTION 14. EFFECTIVE DATE.** This Ordinance shall take effect five days
30 after publication by title and general summary.

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