

# CITY of ALBUQUERQUE

## TWENTY THIRD COUNCIL

COUNCIL BILL NO. R-19-193 ENACTMENT NO. R-2019-085

SPONSORED BY: Patrick Davis

1 RESOLUTION

2 DECLARING THE PROPERTY AT 5401 KATHRYN AVENUE SOUTHEAST A  
3 PUBLIC NUISANCE; DIRECTING THE OWNER ENTER INTO A NUISANCE  
4 ABATEMENT AGREEMENT WITH THE CITY; DIRECTING THE CITY ATTORNEY  
5 TO FILE NUISANCE PROCEEDINGS WITH THE COURT FOR  
6 NONCOMPLIANCE.

7 WHEREAS, the building, structure or premises is located at 5401 KATHRYN  
8 AVE SE, which is located and is more particularly described as: \* 011  
9 004ESPERANZA ADON & L12; and

10 WHEREAS, the Police Department has responded to this property 296  
11 times between January 1, 2018 and April 30, 2019 (16 months), for calls  
12 including:

- 13 • 1 shooting
- 14 • 2 stabbings
- 15 • 11 other assaults
- 16 • 49 thefts or larcenies, including thefts from the business
- 17 • 3 stolen automobiles recovered on the property
- 18 • 12 domestic disturbances
- 19 • 3 felony warrant arrests
- 20 • 195 other disturbance calls including shots fired; and

21 WHEREAS, the Fire Department has responded to this property 70 times  
22 between January 1, 2018 and April 30, 2019 (16 months), for medical calls; and

23 WHEREAS, The City of Albuquerque's 3-1-1 center has received 691  
24 complaints from residents reporting incidents within a one block radius of this  
25 location in the past two years; and

26 WHEREAS, COA COO 11-1-1-3(A), the "Nuisance Abatement Ordinance,"

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1 defines a nuisance as, among other things, "Any parcel of real property,  
2 commercial or residential, any personal property, or any vehicle on or in which  
3 any of the following illegal activities occurs, or which is used to commit,  
4 conduct, promote, facilitate, or aid the commission of or flight from any of the  
5 following activities," and includes incidents which have occurred on the  
6 property to include:

- 7 "(21) Murder
- 8 (22) Manslaughter
- 9 (23) Incidents of assault
- 10 (24) Aggravated assault
- 11 (25) Assault with the intent to commit a violent felony
- 12 (26) Battery
- 13 (27) Aggravated battery
- 14 (29) Assault against a household member
- 15 (30) Aggravated assault against a household member
- 16 (31) Assault against a household member with intent to commit a violent  
17 felony
- 18 (32) Battery against a household member
- 19 (33) Aggravated battery against a household member
- 20 (50) Incidents of littering
- 21 (60) Criminal damage to property
- 22 (61) Unauthorized graffiti on personal or real property
- 23 (62) Larceny
- 24 (68) Shoplifting"; and

25 WHEREAS, COA COO 11-1-1-1, the "Nuisance Abatement Ordinance," also  
26 defines a nuisance as, among other things, "11-1-1-3(0), A public nuisance  
27 shall include and is further defined as any parcel of real property, commercial  
28 or residential, that is the subject of or that has been involved with calls for  
29 service to any law enforcement agency(ies) for violations of the criminal  
30 statutes cited in § 11-1-1-3(A) defining public nuisance and shall include a  
31 repeated pattern of calls for service and complaints of vagrants, suspicious  
32 persons, suspicious cars, general calls for welfare checks, disorderly conduct,  
33 domestic violence, domestic altercations, domestic disputes, loud parties,

1 loud music, neighborhood complaints, noise ordinance violations, and public  
2 drunkenness and shall be subjected to the imposition of penalties for public  
3 nuisance as provided by § 11-1-1-11 ROA 1994; and

4 WHEREAS, the business operating at the property operates 24 hours a day,  
5 seven days a week, year-round and has representatives on site to observe the  
6 listed activities, and police and fire reports indicate multiple contacts with  
7 staff on site regarding the calls for service outlined here, demonstrating that  
8 the management and/or owner knows or should know of the many public  
9 safety responses to the property; and

10 WHEREAS, the Nuisance Abatement Ordinance allows the City to enter into  
11 a nuisance abatement agreement with the owner of a nuisance property, or to  
12 file legal action against a nuisance property owner for non-compliance.

13 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
14 ALBUQUERQUE:

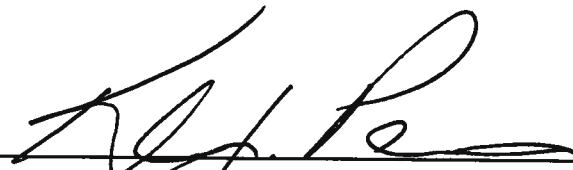
15 SECTION 1. That the findings of the City Council, in regard to said property  
16 at 5401 KATHRYN AVE SE 87108, it is found to be a nuisance property  
17 pursuant to § 11-1-1-11 ROA 1994, "The Nuisance Abatement Ordinance."

18 SECTION 2. That SOUTHWEST CONVENIENCE STORES LLC of ROWLETT,  
19 TX, record owner of said property or the current owner shall enter into a  
20 nuisance abatement agreement of same within fifteen (15) days after service of  
21 a copy of this Resolution or within said fifteen (15) day period, file written  
22 objection to findings herein with the City Clerk/Recorder of the City of  
23 Albuquerque, asking for a hearing before the City Council.

24 SECTION 3. If there is a failure of compliance with the provision of Section  
25 2 herein, the City Attorney is directed to pursue appropriate legal remedies to  
26 abate the nuisance.

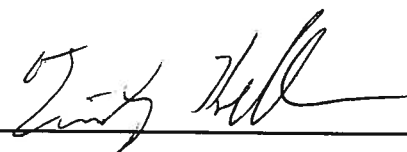
27 SECTION 4. SEVERABILITY CLAUSE. If any section, paragraph, sentence,  
28 clause, word or phrase of this resolution is for any reason held to be invalid or  
29 unenforceable by any court of competent jurisdiction, such decision shall not  
30 affect the validity of the remaining provisions of this resolution. The Council  
31 hereby declares that it would have passed this resolution and each section,  
32 paragraph, sentence, clause, word or phrase thereof irrespective of any  
33 provisions being declared unconstitutional or otherwise invalid.

1 PASSED AND ADOPTED THIS 4<sup>th</sup> DAY OF November, 2019  
2 BY A VOTE OF: 9 FOR 0 AGAINST.  
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9 Klarissa J. Peña, President  
10 City Council  
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14 APPROVED THIS 18 DAY OF December, 2019  
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18 Bill No. R-19-193  
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23 Timothy M. Keller, Mayor  
24 City of Albuquerque  
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27 ATTEST:

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29 Katy Duhigg, City Clerk  
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