

Owner Enter Into A Nuisance Abatement Agreement With The City; Directing The City Attorney To File Nuisance Proceedings With The Court For Noncompliance (Davis)
DECLARING THE PROPERTY AT 5401 KATHRYN AVENUE SOUTHEAST A PUBLIC NUISANCE; DIRECTING THE OWNER ENTER INTO A NUISANCE ABATEMENT AGREEMENT WITH THE CITY; DIRECTING THE CITY ATTORNEY TO FILE NUISANCE PROCEEDINGS WITH THE COURT FOR NONCOMPLIANCE.

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

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

- **1 shooting**
- **2 stabbings**
- **11 other assaults**
- **49 thefts or larcenies, including thefts from the business**
- **3 stolen automobiles recovered on the property**
- **12 domestic disturbances**
- **3 felony warrant arrests**
- **195 other disturbance calls including shots fired; and**

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

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

WHEREAS, COA COO 11-1-1-3(A), the "Nuisance Abatement Ordinance," defines a nuisance as, among other things, "Any parcel of real property, commercial or residential, any personal property, or any vehicle on or in which any of the following illegal activities occurs, or which is used to commit, conduct, promote, facilitate, or aid the commission of or flight from any of the following activities," and includes incidents which have occurred on the property to include:

“(21) Murder

(22) Manslaughter

(23) Incidents of assault

- (24) Aggravated assault**
- (25) Assault with the intent to commit a violent felony**
- (26) Battery**
- (27) Aggravated battery**
- (29) Assault against a household member**
- (30) Aggravated assault against a household member**
- (31) Assault against a household member with intent to commit a violent felony**
- (32) Battery against a household member**
- (33) Aggravated battery against a household member**
- (50) Incidents of littering**
- (60) Criminal damage to property**
- (61) Unauthorized graffiti on personal or real property**
- (62) Larceny**
- (68) Shoplifting"; and**

WHEREAS, COA COO 11-1-1-1, the "Nuisance Abatement Ordinance," also defines a nuisance as, among other things, "11-1-1-3(0), A public nuisance shall include and is further defined as any parcel of real property, commercial or residential, that is the subject of or that has been involved with calls for service to any law enforcement agency(ies) for violations of the criminal statutes cited in § 11-1-1-3(A) defining public nuisance and shall include a repeated pattern of calls for service and complaints of vagrants, suspicious persons, suspicious cars, general calls for welfare checks, disorderly conduct, domestic violence, domestic altercations, domestic disputes, loud parties, loud music, neighborhood complaints, noise ordinance violations, and public drunkenness and shall be subjected to the imposition of penalties for public nuisance as provided by § 11-1-1-11 ROA 1994; and

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

WHEREAS, the Nuisance Abatement Ordinance allows the City to enter into a nuisance abatement agreement with the owner of a nuisance property, or to file legal action against

a nuisance property owner for non-compliance.

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

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

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

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

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