

Adding A New Section To The Criminal Code (Chapter 12, Article 2, ROA 1994) To Prohibit The Unauthorized Presence And Camping In Water Conveyance Systems (Fiebelkorn)
ADDING A NEW SECTION TO THE CRIMINAL CODE (CHAPTER 12, ARTICLE 2, ROA 1994) TO PROHIBIT THE UNAUTHORIZED PRESENCE AND CAMPING IN WATER CONVEYANCE SYSTEMS.

WHEREAS, fast moving waters presents a public safety hazard that is mitigated through a combination of strategies, the foremost of which, is the development of water conveyance systems, such as arroyos, engineered channels, ditches, storm drains and piping that collect and transport waters; and

WHEREAS, these conveyance systems are subject to periods of fast flowing water that have the hydraulic power to overwhelm and carry away persons or objects that are present in the conveyance systems when the water flows occur; and

WHEREAS, in recent years, within the City of Albuquerque, persons have been loitering and camping in these conveyance systems, and annually, a number of these persons are swept away and drowned in these waters. Their presence has also impeded the ability of agencies to maintain these facilities in safe working conditions; and

WHEREAS, to provide for public safety there is subsequently a need to restrict access to these conveyance systems to only those persons with official business.

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

SECTION 1. A new Section 12-2-30 is hereby added to the Criminal Code, Chapter 12, Article 2 of the Revised Ordinances of Albuquerque, 1994, as follows:

§12-2-30 UNAUTHORIZED PRESENCE AND CAMPING IN DRAINAGE CHANNELS, ARROYOS AND IRRIGATION CHANNELS.

(A) *Definitions.* For purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Arroyo. A natural or naturalistic water course formed by the action of fast-flowing water that is owned and maintained by a public agency.

Camping. The setting up of any tent, shack, or other permanent or temporary structure or shelter, or preparing a sleeping bag or other bedding material for use in a water conveyance system.

Drainage channel or piping. Engineered structures designed to convey water flow that is

owned, maintained or under the authority of a public agency, and that may consist of earthen, concrete, metal, rock, brick and/or heavy-duty plastic or other materials.

Irrigation channel. An engineered waterway structure, used for the purpose of carrying water from a source to soil used for farming or landscaping that is owned, maintained or under the authority of a public agency, and that may consist of earthen, concrete, metal, rock, brick and/or heavy-duty plastic or other materials.

Public agency. The City of Albuquerque, the County of Bernalillo, the Albuquerque Metropolitan Arroyo Flood Control Authority, or the Middle Rio Grande Conservancy District.

Right of way. The right of way includes all land within the parameters of the area within which the public agency owns, operates or maintains the drainage channel, arroyo, irrigation channel or piping, and is not restricted to the drainage channel, arroyo, irrigation channel, or piping.

Water Conveyance System. An engineered or natural channel intended to transport water, including an arroyo, drainage channel, irrigation channel, and piping.

- (B) It is unlawful for any person to enter or to remain in a water conveyance system which is owned, maintained or operated by a public agency and which is not designated as an open space area or recreational path, except for public safety personnel and employees of the public agency that owns, maintains or operates said water conveyance system, or those persons authorized by such agency.
- (C) It is unlawful for any person to camp or loiter upon any part of the right of way in which a water conveyance system owned, maintained or operated by a public agency is located, including any portion of such right of way designated as "Open Space."
- (D) It is unlawful for any person to remain in an open space or recreational trail that is within the right of way of a water conveyance channel after having been instructed to leave by an employee of the public agency that controls the water conveyance system, their designated representative, or a law enforcement official, due to a public safety issue or to allow the agency to conduct facility maintenance.
- (E) It is unlawful for any person to operate a motor vehicle or an off highway vehicle in the right of way of a water conveyance system, that is owned, maintained or operated by a public agency, including any water conveyance system designated as "Open Space" or as a recreation trail, except for public safety personnel and employees of the public agency that owns, maintains or operates said water conveyance system, or those persons authorized by

such agency.

(F) The penalties set forth in § 12-1-99 shall apply for a violation of this section; provided, however, that a law enforcement officer, shall first verify that a written warning has been issued, otherwise, the officer shall issue a Criminal Trespass Notification to a person for violating this section prior to the issuing of a citation or conducting an arrest. However, in the event of an immediate danger, a verbal warning prior to a citation or arrest is permitted.

SECTION 2. SEVERABILITY. If any section, paragraph, sentence, clause, word, or phrase of this Ordinance 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 Ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word, or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

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

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

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