



Legislation Text

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**CITY of ALBUQUERQUE**  
**TWENTY FIFTH COUNCIL**

COUNCIL BILL NO. O-23-75

ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Pat Davis, by request

ORDINANCE

Amending The Nuisance Abatement Ordinance Chapter 11, Article 1 Of The Revised Ordinances Of Albuquerque, Amending Definitions And Penalties; Amending The Albuquerque Weed And Anti-Litter Ordinance, Chapter 9, Article 8 Of The Revised Ordinances Of Albuquerque, Amending Definitions And Penalties, And Appeal Procedure For Administrative Hearings; Amending The "Heart" Ordinance Chapter 9, Article 2, Amending Definitions, The Hearing Process, Adding A Civil Fine (Davis, by request)

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

SECTION 1. Chapter 11, Article 1 of the Revised Ordinances of Albuquerque is hereby amended as follows:

“§ 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.

§ 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.

**CLOSE, TO CLOSE, or CLOSURE.** To [~~seize the property and~~] remove all owners, tenants, occupants and other persons and animals from the real property, vehicle, or personal property, or a specified discrete portion thereof, and to lock, board, bar, or otherwise close and prohibit all entry, access, and use of the real property, vehicle, or other personal property, or a specified discrete portion thereof, except such access and use as may be specifically ordered by the court for purposes of inventory, maintenance, storage, security, and other purposes[~~, and to vest the sole right of possession and control of the real property, vehicle, or personal property, or a specified discrete portion thereof, in the City of Albuquerque for a limited period of time defined by court order. In the case of a vehicle, closure includes impoundment~~].

**CONTRABAND.** Any personal property which is illegal to own.

[ **CRIME PREVENTION STANDARDS.** Standards promulgated by the Mayor's designee for the design, management and operation of a property or business that aim to prevent criminal activity.]

**CRIMINAL STREET GANG.** Any organization, association in fact, or group of three or more persons, whether formally or informally organized, or any subgroup or affiliated group thereof, having as one of its primary activities the commission of one or more criminal acts or illegal acts, which has an identifiable name or identifying sign or symbol and whose members individually or collectively engage in or have engaged in a pattern of gang-related criminal activity.

**FLIGHT.** To flee, escape, or leave the place where the public nuisance activity was committed or conducted.

**LEGAL OR EQUITABLE INTEREST OR RIGHT OF POSSESSION.** Every legal or equitable interest, title, estate, tenancy, or right of possession recognized by law and equity, including [~~but not limited to~~] freeholds, life estates, future interests, condominium rights, time- share rights, leaseholds, easements, licenses, liens, deeds of trust, contractual rights, mortgages, security interests, and any right or obligation to manage or act as agent or trustee for any person holding any of the foregoing.

**MAYOR'S DESIGNEE.** The person(s) or entity(ies) appointed by the Mayor to enforce this ordinance.

**PARCEL.** Any lot or other unit of real property or any combination of contiguous lots or units owned by the same person as defined herein.

**PERSON.** Natural persons and every legal entity whatsoever, including [~~but not limited to~~] sole

proprietors, corporations, limited liability companies, partnerships, limited partnerships, and associations.

*PERSONAL PROPERTY.* All property of every kind and nature whatsoever including cash, vehicles, animals, intangible property and contraband, but not including real property of any kind.

*PROPERTY.* Property of all kinds, including real property and personal property as defined herein.

*PUBLIC NUISANCE.*

(A) 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. For purposes of this section, the illegal activity shall have the same definition as that contained in the section of the New Mexico Statutes Annotated (NMSA), as amended, or Chapter 12, the Criminal Code of the Revised Ordinances of Albuquerque, New Mexico, 1994, as amended, listed after the illegal activity:

- (1) Prostitution, 30-9-2 NMSA; patronizing prostitutes, 30-9-3 NMSA; promoting prostitution, 30-9-4 NMSA; or accepting earnings of a prostitute, 30-9-4.1 NMSA; or
  - (2) Sexual exploitation of children by prostitution, 30-6A-4 NMSA; or
  - (3) Sexual exploitation of children, 30-6A-3 NMSA; or
- (4) Trafficking in controlled substances, 30-31-20 NMSA; distributing controlled substances to a minor, 30-31-21 NMSA; distribution of a controlled substance, 30-31-22 NMSA; possession of a controlled substance, 30-31-23 NMSA; distributing a counterfeit controlled substance, 30-31-22B NMSA; distributing, manufacture, or possession of an imitation controlled substance, 30-31A-4 NMSA; sale of an imitation controlled substance to a minor, 30-31A-5 NMSA; or
- (5) Unlawful possession, delivery, manufacture or delivery to a minor of drug paraphernalia, 30-31-25.1 NMSA; or
  - (6) Receiving stolen property, 30-16-11 NMSA; or
- (7) Commercial gambling, 30-19-3 NMSA; permitting premises to be used for gambling, 30-19-4 NMSA; dealing in gambling devices, 30-19-5 NMSA; or
  - (8) Disorderly conduct, 30-20-1 NMSA and § 12-2-5 ROA 1994; or
- (9) Unlawful carrying of a deadly weapon, 30-7-2 NMSA and § 12-2-8 ROA 1994; unlawful possession of a handgun, 30-7-2.2 NMSA; negligent use of a weapon, 30-7-4 NMSA and § 12-2-9 ROA 1994; unlawful possession of a switchblade, 30-7-8 NMSA and § 12-2-10(A) ROA 1994;

receipt, transportation or possession by a felon of a firearm or destructive device, 30-7-16 NMSA; unlawful possession, transfer or sale of weapons, § 12-2-10 ROA 1994; or

(10) Dangerous use of explosives, 30-7-5 NMSA; negligent use of explosives, 30-7-6 NMSA; unlawful sale, possession or transportation of explosives, 30-7-7 NMSA; possession of explosives, 30-7-19 NMSA; possession of explosive device or incendiary device, 30-7-19.1 NMSA; or

(11) Any criminal activity by a criminal street gang as defined herein; or

(12) Shooting at a dwelling or occupied building or shooting at or from a motor vehicle, 30-3-8 NMSA; or

(13) Selling, serving, giving away, disposing of, exchanging, delivering, procuring, possessing or permitting the sale of alcoholic beverages to, for or by any person under lawful age or to an intoxicated person, 60-7A-16 and 60-7B-1 NMSA; using property to provide, offer or permit the consumption of intoxicating liquors by three or more persons who are under the age of twenty-one without their parent's or guardian's knowledge or consent or the order of a practicing physician, or as part of a religious ceremony, or failing to use reasonable control and ordinary care to keep persons under the age of twenty-one from consuming intoxicating liquors on one's property, § 11-11-5 ROA 1994; or

(14) The sale of alcoholic beverages at any place other than a valid (not suspended or revoked) licensed premises, 60-7A-4.1 NMSA; or the unlawful manufacture of alcoholic beverages, 60-7A-7 NMSA; or

(15) The unlawful transportation or storage of any property that is the subject of a felony theft, misdemeanor theft, or theft by receiving under Chapter 30, Article 16 NMSA; or

(16) The storage or concealment of weapons or tools used in the commission of a violent crime or tampering with evidence, 30-22-5 NMSA; harboring or aiding a felon, 30-22-4 NMSA; or

(17) Fleeing or evading a police officer on foot or by vehicle, 30-22-1 NMSA; or escape from a peace officer, 30-22-10 NMSA; or

(18) Dog fighting, 30-18-9 NMSA; or

(19) Assault upon a peace officer, 30-22-21 NMSA; aggravated assault upon a peace officer, 30-22-22 NMSA; assault with intent to commit a violent felony upon a peace officer, 30-22-23 NMSA; battery upon a peace officer, 30-22-24 NMSA; aggravated battery upon a peace officer, 30-22-25 NMSA; assisting in assault upon a peace officer, 30-22-26 NMSA; disarming a peace officer, 30-22-27 NMSA; or

- (20) Incidents of unreasonable noises, § 12-2-4 ROA 1994 and §§ 9-9-1 et seq. ROA 1994.
- (21) Murder, 30-2-1 NMSA; or
- (22) Manslaughter, 30-2-3 NMSA; or
- (23) Incidents of assault, 30-3-1 NMSA; or
- (24) Aggravated assault, 30-3-2 NMSA; or
- (25) Assault with intent to commit a violent felony, 30-3-3 NMSA; or
- (26) Battery, 30-3-4 NMSA; or
- (27) Aggravated battery, 30-3-5 NMSA; or
- (28) Shooting at a dwelling or occupied building; shooting at or from a motor vehicle, 30-3-8 NMSA; or
- (29) Assault against a household member, 30-3-12 NMSA; or
- (30) Aggravated assault against a household member, 30-3-13 NMSA; or
- (31) Assault against a household member with intent to commit a violent felony, 30-3-14 NMSA; or
- (32) Battery against a household member, 30-3-15 NMSA; or
- (33) Aggravated battery against a household member, 30-3-16 NMSA; or
- (34) Harassment, 30-3A-2 NMSA; or
- (35) Stalking, 30-3A-3 NMSA; or
- (36) Aggravated stalking, 30-3A-3.1 NMSA; or
- (37) Kidnapping, 30-4-1 NMSA; or
- (38) Criminal use of ransom, 30-4-2 NMSA; or
- (39) False imprisonment, 30-4-3 NMSA; or
- (40) Custodial interference, 30-4-4 NMSA; or
- (41) Abandonment or abuse of a child, 30-6-1 NMSA; or
- (42) Contributing to the delinquency of a minor, 30-6-3 NMSA; or
- (43) Obstruction of reporting or investigation of child abuse or neglect, 30-6-4 NMSA; or
- (44) Unlawful carrying of a firearm in a licensed liquor establishment, 30-7-19.1 NMSA; or
- (45) Possession of explosives, 30-7-19 NMSA; or
- (46) Possession of explosive device or incendiary device, 30-7-19.1 NMSA; or
- (47) Facsimile or hoax bomb or explosive, 30-7-20 NMSA; or
- (48) False report, 30-7-21 NMSA; or
- (49) Interference with bomb or fire control, 30-7-22 NMSA; or

- (50) Incidents of littering, 30-8-4 NMSA; or
- (51) Enticement of a child, 30-9-1 NMSA; or
- (52) Accepting earnings of a prostitute, 30-9-4.1 NMSA; or
- (53) House of prostitution; public nuisance, 30-9-8 NMSA; or
- (54) Criminal sexual penetration, 30-9-11 NMSA; or
- (55) Criminal sexual contact, 30-9-12 NMSA; or
- (56) Criminal sexual contact of a minor, 30-9-13 NMSA; or
- (57) Aggravated indecent exposure, 30-9-14.3 NMSA; or
- (58) Criminal trespass, 30-14-1 NMSA; or
- (59) Breaking and entering, 30-14-8 NMSA; or
- (60) Criminal damage to property, 30-15-1 NMSA; or
- (61) Unauthorized graffiti on personal or real property, 30-15-1.1 NMSA; or
- (62) Larceny, 30-16-1 NMSA; or
- (63) Robbery, 30-16-2 NMSA; or
- (64) Burglary, 30-16-3 NMSA; or
- (65) Aggravated burglary, 30-16-4 NMSA; or
- (66) Possession of burglary tools, 30-16-5 NMSA; or
- (67) Receiving stolen property, 30-16-11 NMSA; or
- (68) Shoplifting, 30-16-19 NMSA; or
- (69) Cruelty to animals, 30-18-1 NMSA; or
- (70) Unlawful assembly, 30-20-3 NMSA; or
- (71) Attempt to commit a felony, 30-28-1 NMSA; or
- (72) Conspiracy, 30-28-2 NMSA; or
- (73) Solicitation, 30-28-3 NMSA; or
- (74) Public nuisance, 30-8-1 NMSA; or
- (75) Violations of the New Mexico Liquor Control Act, 60-3A-1, et seq. NMSA, and 60-7A-1, et seq. NMSA; or
- (76) Violations of the City of Albuquerque Uniform Housing Code, § 14-3-1-1 to § 14-3-5-99 ROA 1994; or
- ~~[(77) Violations of the City of Albuquerque Housing Code defining nuisance, § ROA 1994; or~~
- ~~(78) Violations of City of Albuquerque Housing Code defining substandard building, § ROA 1994; or]~~

- (7[7][9]) Violations of the City of Albuquerque Fire Codes, § 14-2-1 ROA 1994; or
- ([7]8[0]) Violations of the City of Albuquerque's Abandoned or Inoperable Vehicle Ordinance, § 8-5-2-0 to § 8-5-2-99 ROA 1994; or
- (79) Violations of the City of Albuquerque's Humane and Ethical Animal Rules and Treatment (HEART) Ordinance, § 9-2-2-2 ROA 1994, *Housing and Restraint Standards for Mammals and Birds Kept on Residential Property*; or
- (80) Violations of the City of Albuquerque's Humane and Ethical Animal Rules and Treatment (HEART) Ordinance, § 9-2-4-7 ROA 1994, *Animal Noise*; or
- (81) Violations of the City of Albuquerque's Humane and Ethical Animal Rules and Treatment (HEART) Ordinance, § 9-2-4-8 ROA 1994, *Animal Fights*; or
- (82) Violations of the City of Albuquerque's Joint Air Quality Control Board Ordinance, § 9-5-1-1 to § 9-5-6-3 ROA 1994; or
- (83) Violations of the City of Albuquerque's Food Sanitation Ordinance, § 9-6-1-1 to § 9-6-1-99 ROA 1994; or
- (84) Violations of the City of Albuquerque's Albuquerque Insect and Rodent Control Ordinance, § 9-7-1 to § 9-7-99 ROA 1994; or]
- (8[4][5]) Violations of the City of Albuquerque's Weed and Litter Ordinance, § 9-8-1 to § 9-8-99 ROA 1994; or
- (86) Violations of the City of Albuquerque's Noise Control Ordinance, § 9-9-1 to § 9-9-12 ROA 1994; or
- (87) Violations of the City of Albuquerque's Pollen Control Ordinance, § 9-12-1 to § 9-12-99 ROA 1994; or
- (88) Violations of the City of Albuquerque's Pigeon Nuisance Abatement Ordinance, § 9-18-1 to § 9-18-7 ROA 1994; or
- (89) Violations of the City of Albuquerque's Integrated Development Ordinance, § 14-16-4-2 ROA 1994; or]

([82][90]) Driving under the influence of intoxicating liquor or drugs, 66-8-102 NMSA.

(B) 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.

[ (C) A public nuisance shall include and is further defined as any building or structure, commercial or residential, that has unsecured doorways or window openings or holes in the exterior of the building or structure that permit the entry of unauthorized persons and is without a legally responsible party immediately available to take possession of or secure the structure.]

*REAL PROPERTY.* Land and all improvements, buildings, and structures, and all estates rights and interests, legal and equitable, in the same, including[, but not limited to,] all forms of ownership and title, future interests, condominium rights, time-share rights, easements, water rights, mineral rights, oil and gas rights, space rights, and air rights.

*RECEIVERSHIP.* The special receivership on the terms set out in §[ 11-1-1-25] [13(B)(4)] below.

*RELOCATION AGENCY.* Those employees of the Department of Family and Community Services responsible for implementing the provisions of Ordinance 21-2007 (§ 14-3-5-16 ROA 1994).

*RELOCATION COSTS.* The expenses reasonably incurred by a resident displaced from a residential building pursuant to action of the City of Albuquerque. Relocation costs shall be \$2,000 per family unless the resident can demonstrate special circumstances that make the relocation cost a greater amount. If special circumstances are demonstrated, relocation costs may include the actual cost of physically moving to a residential building approved by the relocation agency (the "replacement unit"); costs of moving to a location outside of the immediate area; any security/damage deposit required by the replacement unit owner which exceed the amount of the security/ damage deposit recovered from the owner of the building the resident is moving from; utility deposits and hook up cost and the rent for the first month; costs of moving back to the residential building originally vacated after housing code compliance; and any other reasonable relocation costs.

*RENTAL AGREEMENT.* Any written or oral agreement allowing occupancy of a residential building by a resident.

*RESIDENT.* One or more people entitled under a rental agreement to occupy all or a portion of a residential building to the exclusion of others and who actually reside(s) at such location.

*RESIDENT REMOVAL.* The removal of resident(s) from their residential building as a result of



an action filed by the City of Albuquerque under the authority of § 11-1-1-21 ROA 1994, or a comparable proceeding authorized by ordinance, statute or common law, to abate a nuisance resulting in the ~~seizure~~, closure, receivership, sale or destruction of the residential unit.

*RESIDENTIAL BUILDING.* A building or portion thereof designed or used for human habitation.  
*STRUCTURE.* Anything constructed, erected, or placed upon real property which is so firmly attached to the land as to be reasonably considered part of the real estate, and includes buildings of every type and nature whatsoever.

*TENANT.* Any person who uses, resides in, or occupies property identified as a public nuisance, regardless of whether the tenant has the consent of the owner to use, reside, or occupy the property.

*VEHICLE.* Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devices moved exclusively by human power or used exclusively upon stationary rails or tracks.

*SUBPART B:*

*CRIMINAL ABATEMENT OF PUBLIC NUISANCE OFFENSES: IN PERSONAM PROCEEDINGS*  
§ 11-1-1-10 PUBLIC NUISANCES PROHIBITED.

(A) It shall be unlawful for any owner, manager, tenant, lessee, occupant, or other person having any legal or equitable interest or right of possession in any real property, vehicle, or other personal property to intentionally, knowingly, recklessly, or negligently commit, conduct, promote, facilitate, permit, fail to prevent, or otherwise let happen, any public nuisance in, on or using any property in which they hold any legal or equitable interest or right of possession.

(B) An owner of property whose own activities on the real property are not a nuisance shall not be in violation of this ordinance if the owner has no knowledge of the public nuisance activity and, upon receiving notice of the activity constituting a nuisance, the owner:

- (1) Demonstrates to the city that the rental agreement for the property contains a provision prohibiting criminal activity;
- (2) Delivers to the tenant(s) a written notice of termination of the rental agreement as provided by the New Mexico Owner-Resident Relations Act;
- (3) Files an appropriate report with law enforcement authorities or otherwise cooperates with such authorities in enforcing laws with respect to tenants on the property;
- (4) Initiates necessary and appropriate legal action to remove residents involved in criminal

activity where such activity can be proven;

(5) Takes all reasonable and available steps to terminate the public nuisance activity[, including, but not limited to, implementing the City's Crime Prevention Standards on the property]; and

(6) Enters into a written Nuisance Abatement Agreement with the City of Albuquerque wherein the property owner agrees to take specific steps[, which may include [including but not limited to ]providing on-site security or otherwise tak[e][ing] action that will abate, terminate or eliminate the public nuisance activity on the property in exchange for the City of Albuquerque reserving its rights and agreeing not to initiate any legal action for public nuisance against the property owner during the term of the agreement provided that the property owner complies with the terms and conditions of the written Nuisance Abatement Agreement and the public nuisance is eliminated, abated or terminated.

(7) Victims of domestic violence shall not be identified or named as a defendant in any civil cause of action to abate a public nuisance involving commercial or residential property.

#### § 11-1-1-11 PENALTIES FOR PUBLIC NUISANCE VIOLATIONS.

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

(B) Upon conviction of violation of this ordinance, the city shall register the violating property with the city agencies and/or the County Clerk.

(C) *Conditions of suspended sentences.* In the event that the court chooses to suspend any portion of the fine or sentence for a violation of this ordinance, the city shall request that the court make the suspended sentence expressly conditional on the following terms:

(1) The defendant must evict, remove, and permanently bar from entering the property any persons who committed the criminal activity forming the basis of the public nuisance, including [ ~~but not limited to~~ ]the defendant himself, his or her family members and relatives, and owners, tenants, occupants, guests, and other persons. This may be accomplished through forcible entry and detainer actions, sale of the property, new leases of the property, or other legal action as needed; and

(2) The defendant must take steps to abate the public nuisance, eliminate its past and continuing adverse effects on the neighborhood, and prevent public nuisances from recurring on

the property[~~]. Such steps may include~~][including but not limited to] landlord training, tenant background checks and screening, [~~making~~]improvements to the property, including general repairs which will bring the property into compliance with[ ~~the City Uniform~~] Housing Code, § 14-3-1 et seq., ROA 1994[~~;~~]; Integrated Development Ordinance, § 14-16-1-1, et seq., ROA 1994, [~~and~~]including fencing, lighting, and destruction of buildings, modifications to leases, security guards, removal of trash, junk, and graffiti, and compliance with all other applicable City Codes; and

(3) Any other conditions the court deems appropriate.

(D) *Posting and publication of public nuisance convictions.* Upon the conviction of any person for violating this ordinance, in addition to any fine and/or jail sentence, the city may file in the office of the County Clerk a certificate describing the real property and that it has been found to be a public nuisance. The city may also post such notices in prominent places on the real property on which the public nuisance occurred. These notices may be attached to any structure on the real property. The city shall have the right to enter the real property for the purpose of erecting, affixing, maintaining and removing these notices. The city may also publish or release notices describing the property and stating that it has been found to be a public nuisance in or to newspapers, periodicals, magazines, fliers and other print media, and may release such notices to television, radio and cable media. [~~The notices and releases may contain the property address, the names of the defendants convicted and all persons holding any legal or equitable interest in the property, photographs of the defendants and all persons holding any legal or equitable interest in the property, photographs of the property and the nuisance activity, a narrative description of the nuisance activity involved, a statement that the property constitutes a public nuisance, the court's sentence including any suspended sentence, and the conditions of the same, and may invite the public to contact the city regarding any further nuisance activity or violations of the sentence.~~]The city may post the property and release or publish the notices provided above for a period not exceeding one year from the conviction, or, in the event that the conviction is appealed, one year from the date the conviction is affirmed. It shall be unlawful for any person to interfere with, remove, obliterate, obscure, cover, or destroy any notice posted pursuant to the provisions of this section.

(E) *Additional and alternative remedies.* In addition or in the alternative to the criminal fines, sentences, conditions of suspended sentences, publication, posting, press and media releases, and other sanctions provided above, the city may also seek administrative remedies against any [

applicable ]license and the civil remedies provided in this ordinance. These remedies shall be cumulative, and the city may pursue one or more of them, simultaneously or in succession.

[§ 11-1-1-12 Administration.

The Mayor's designee shall be responsible for the administration of this article. Reasonable rules and regulations may be promulgated by the Mayor's designee to carry out the intent and purpose of this article.]

*SUBPART C:*

*CIVIL ABATEMENT OF PUBLIC NUISANCE OFFENSES: IN REM PROCEEDINGS*

§ 11-1-1-20 INTENT.

(A) The abatement of public nuisances for the protection of public health, safety, and welfare is a matter of local concern. The purpose of this subpart is not to punish, but to abate public nuisances. The actions provided in this subpart are designed to abate public nuisances by removing the property [~~and vehicles ]~~from criminal use and as a base of criminal operations, [~~to ensure that criminal activity and the use of the property for criminal purposes is unprofitable, to require that the profits of criminal activity be disgorged,]~~ to make property owners vigilant in preventing public nuisances on, in, or using their property and responsible for the lawful use of their property by tenants, guests and occupants, and to deter public nuisances. The remedies provided in this subpart are directed at the property involved without regard to ownership, title or right of possession and the culpability or innocence of those who hold these rights. The remedial actions provided in this subpart are intended to be civil in nature. The remedies of [~~seizure,]~~ temporary restraining order, closure, receivership, sale, and/or destruction are intended to be in rem, against the property itself, and not against any individual directly. However, the remedies of temporary restraining order, civil judgment, and permanent injunction may be partially in personam.

(B) In order to ensure that the remedies provided in this ordinance are applied in good faith and for the purposes of public nuisance abatement, [~~the following shall apply:~~

(1) N][n]o city employee's or law enforcement officer's employment or level of salary shall depend upon the frequency or quantity of actions and remedies under this ordinance that he or she produces.

[ (2) All seizures of real property shall be made pursuant to a temporary restraining order based upon a judicial finding of probable cause and only after an opportunity for an adversarial hearing to contest the seizure has been provided.]

(C) This subpart is not intended to authorize any act expressly prohibited by state law, nor to forbid any conduct expressly authorized by state law. The provisions of this subpart shall be construed to avoid any such direct and express conflict.

(D) The sections of this subpart are intended to provide a comprehensive scheme for civil public nuisance abatement and should be read together.

#### § 11-1-1-21 PROCEDURE IN GENERAL.

(A) The remedies provided in Subpart C of this ordinance are cumulative and supplementary to the criminal penalties provided in Subpart B of this ordinance, the criminal remedies provided by any other criminal ordinance or statute, other civil remedies, and any administrative proceedings to revoke, suspend, fine, or take other action against any license. The city may pursue the remedies provided in Subpart C of this ordinance, the criminal penalties provided in Subpart B of this ordinance or other ordinances or statutes, other civil actions or remedies, administrative proceedings against a license, or any one or more of them, and may do so simultaneously or in succession.

(B) In the event that the city pursues both the criminal penalties in Subpart B, the criminal remedies provided in any other section, other civil remedies, or the remedies of any administrative action and the remedies in Subpart C, the civil actions provided in Subpart C shall not be delayed or held in abeyance pending the outcome of any proceedings in the criminal, civil or administrative action, or any action filed by any other person, unless all parties to the action under Subpart C so stipulate.

(C) All actions under Subpart C are civil and remedial in nature. All [~~seizure,~~] closure, receivership, sale and destruction remedies under Subpart C shall be in rem. Injunctive remedies under this section may be partly in personam.

(D) Actions under Subpart C of this ordinance shall be filed by the City Attorney for the City of Albuquerque and/or by the District Attorney for the County of Bernalillo. A private citizen, in the name of the state, may also bring an action under Subpart C.

(E) Actions under Subpart C of this ordinance shall be in accordance with the New Mexico Rules of Civil Procedure and the New Mexico Rules of Evidence.

(F) Actions under Subpart C of this ordinance may affect the use, possession, enjoyment, and title to real property. Accordingly, the city may file and record a notice of lis pendens against the real property involved.

(G) An action under Subpart C of this ordinance shall be commenced by the filing of a verified

complaint or a complaint verified by an affidavit and a motion for temporary restraining order in accordance with the New Mexico Rules of Civil Procedure.

(H) The defendants to an action under Subpart C of this ordinance and the persons liable for the remedies in this section may include the property itself, any persons owning or claiming any legal or equitable interest or right of possession in the property, all tenants and occupants at the property, managers and agents for any persons owning or claiming a legal or equitable interest in the property, any persons committing, conducting, promoting, facilitating or aiding the commission of or flight from a public nuisance, and any other persons whose involvement may be necessary to abate the nuisance, prevent it from recurring, or to carry into effect the court's orders for temporary restraining orders, [~~seizures,~~] closures, receiverships, permanent injunctions, liens, sales and destruction. Any person holding any legal or equitable interest or right of possession in the property who has not been named as a defendant may intervene as a defendant.

(I) Notification before filing civil action [or imposing civil fine].

(1) At least ten (10) calendar days before filing a civil action under this ordinance involving any [~~seizure,~~] closure, or receivership of real property [or imposing a civil fine], the Mayor's designee shall post a notice at the main entrances to the buildings or at some other prominent place on the real property. The Mayor's designee shall also mail a notice by certified mail, return receipt requested, to the owner(s) of the real property and to the holder(s) of the last deed of trust recorded on the real property. The mailing of the notice shall be deemed sufficient if mailed to the owner(s) and the holder(s) of the last recorded deed of trust at the address(es) shown on the records of the Bernalillo County Clerk and/or the Bernalillo County Assessor's Office. The posted and mailed notices shall state that the real property has been identified as a public nuisance and that a civil action under this ordinance may be filed [and a civil fine may be imposed].

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

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

(a) The public nuisance poses a threat to public safety; or

(b) Notice could jeopardize a pending investigation of criminal or public nuisance activity, confidential informants, or other police activity; or

(c) Notice could result in sale, transfer, encumbering or destruction of the property; or

(d) Other emergency circumstances exist; or

(e) The owner(s) and the holder(s) of the last recorded deed of trust have been notified in writing within the last 120 days that the property has been identified as a public nuisance and that a civil action under this ordinance may be filed.

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

(J) Whenever a civil action is filed pursuant to § 11-1-1-21 [https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque\\_nm/0-0-0-36699](https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque_nm/0-0-0-36699) (I) ROA 1994 that involves a building occupied by a resident the following shall apply.

(1) The owner of a residential building (the "owner") shall pay relocation costs for the residents who reside at such residential building when the ten-day notice required in § 11-1-1-21 [https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque\\_nm/0-0-0-36699](https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque_nm/0-0-0-36699) (I) ROA 1994 is issued, subject to the provisions of division (J)(6) of this section. This requirement shall be applicable when any condition which is the basis for the order to vacate is within the control of the owner and the owner or his agent knew or should have known of the existence of the conditions that violate applicable codes, statutes, ordinances or regulations prior to the order to vacate. Notice of such conditions by a governmental agency responsible for the enforcement of a building, residential unit, housing or other appropriate code served on the owner or the owner's agent shall be proof that the owner knew of the conditions. Payment of relocation costs shall be made by the owner to the agency designated by the Mayor[s designee] to administer relocation (the "relocation agency") within 30 days after the owner's receipt of the relocation cost assessment issued by the relocation agency. Interest shall accrue on any amount unpaid by the owner commencing 30 days after the date the relocation agency first advances relocation assistance funds to the displaced resident. Interest accrual shall not be stayed during an appeal by the owner, but an owner who is successful on appeal shall not be liable for interest. Owners who, on appeal, are found to not owe relocation costs shall have payments they have made to the relocation agency refunded to them without interest except for any interest actually paid by the owner.

(2) In addition to the notice requirements of § 11-1-1-21(I) ROA 1994, at the time the notice that the city has filed a civil action under Ordinance 21-2007, notification shall be given to the owner that the owner may be required to pay the relocation costs of any displaced residents. The owner shall also be served with a copy of Ordinance 21-2007.

(3) At the time that a notice is served on the owner of the property, a notice in substantially the following form shall be served on those residents known by name to the Mayor[s designee]. Such notice shall be served by personal service or by mailing a copy of such notice by certified mail, postage prepaid, return receipt requested. As to residents unknown by name to the Mayor[s designee], service may be accomplished by posting such notice at the main entrances or at some other prominent place on or within the residential building. The notice shall be written in both English and Spanish. The notice shall be provided to the relocation agency on or before the day the notice to the residents is served or posted.

NOTICE TO RESIDENTS

YOU MAY BE REQUIRED TO MOVE

IF YOU MUST MOVE[,] YOU MAY BE ENTITLED TO MONEY

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

The Court may order the building to be closed.

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

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

Phone Number:

Address:

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

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

(a) The residents had a rental agreement at the time the notice was served on the residents;

(b) A court had issued an eviction order to the residents prior to the date the notice was served on the residents;

(c) The residents caused or substantially contributed 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 caused by fire, flood or other natural disasters;

(e) The failure to meet the requirements of this code was due to the willful or negligent acts or omissions of the owner;

(f) The resident was in default for non-payment of rent;

(g) 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

(h) 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;

(e) The failure to meet the requirements of this code was due substantially to the willful or grossly negligent acts or omissions of the owner;

(f) The resident was not in default for non-payment of rent;

(g) The basis of the notice to vacate is for a condition that was not caused by the resident's or any third party's illegal conduct without the owner's prior knowledge; and

(h) 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, the requirement to vacate was not caused by actions outside the control of the resident.

(7) The Mayor's [~~office~~] [designee] shall, by regulation, establish a procedure for notice and an impartial evidentiary hearing prior to any determination that an owner must repay relocation costs. The owner shall be entitled to appeal the assessment of relocation costs by the relocation agency pursuant to the appeal provisions of this code. Such appeal shall be filed within 30 calendar days of the owner's receipt of the relocation cost assessment from the relocation agency. The filing of an appeal shall not stay the relocation process.

(8) The Mayor['s designee] may promulgate regulations governing the administration of this section, including [~~but not limited to~~] eligibility for relocation costs, the amount and method of payment of relocation costs, the criteria replacement units must meet.

(9) No action taken pursuant to this division shall affect the rights of residents and owners in

any civil litigation. Nothing ~~[is]~~<sup>[in]</sup> this division shall be construed to change the obligations and rights of owners and residents as required in the Uniform Owner-Resident Relations Act, Section 47-8-1 et seq. NMSA 1978.

~~[(10) There is created in the City Treasury the "Relocation Assistance Fund" that shall be used solely for the purpose of relocation cost payments, costs of administration and enforcement costs related to relocation costs. All relocation payments received by the relocation agency shall be deposited in the Relocation Assistance Fund. Remaining balances at the end of the fiscal year shall remain in the Relocation Assistance Fund and shall not revert to the general fund.]~~

~~(1[0][4]) The relocation agency shall provide assistance in finding alternative housing for residents who are displaced and qualify for relocation assistance under Ordinance 21-2007.~~

~~(1[1][2]) From the time that the city first notifies an owner of conditions that violate applicable codes, statutes, ordinances or regulations to the time that the relocation assistance payments are paid to eligible residents or the time the conditions cited are corrected, the owner shall not evict, harass or intimidate any resident for the purpose of avoiding or diminishing application of this division. Included in this prohibition is the reduction of services to a resident or materially increasing or changing the obligations of any resident, including ~~[but not limited to ]~~rent increases, for purposes of attempting to have the resident vacate the residential building.~~

~~(1[2][3]) The city shall be entitled to attorneys' fees and costs arising from any legal action to collect relocation costs assessed to owners.~~

~~[§ 11-1-1-22 SEIZURE OF CERTAIN VEHICLES AND OTHER PERSONAL PROPERTY BEFORE FILING COMPLAINT.~~

~~(A) Seizure of vehicles and other personal property on an ex parte basis and before filing may be necessary to prevent the removal, destruction or concealment of vehicles and other personal property to thwart the remedies provided in this ordinance.~~

~~(B) If the Mayor's designee or any police officer determines that there is probable cause to believe that:~~

~~—(1) A public nuisance as defined in Subpart A of this ordinance has occurred; and~~

~~(2) The public nuisance occurred in a vehicle, or a vehicle or other personal property was used to commit, conduct, promote, facilitate or aid the commission of or flight from the public nuisance; and~~

~~(3) The vehicle or other personal property is capable of being concealed, destroyed, or removed from the City of Albuquerque and the County of Bernalillo; then the Mayor's designee or~~

any police officer may seize and impound the vehicle or other personal property as a public nuisance.

(C) In any case in which a vehicle or other personal property is seized as provided in Subsection (A) above, the police officer or Mayor's designee shall report the seizure to the City Attorney within five (5) days of said seizure. Within 30 days of the date the seizure is reported to the City Attorney, the City Attorney shall either declare the vehicle or other personal property available for release, declare the vehicle or other personal property to be contraband, declare the vehicle or other personal property to be relevant evidence in a criminal proceeding, or file an action under this ordinance seeking closure of the vehicle or other personal property. The declarations provided above shall be in writing and shall be made available as public record at the office of the Mayor's designee.

(D) Any person claiming any legal or equitable interest or right of possession in any vehicle or other personal property seized under this Section may file a motion in the civil action filed under this Subpart C for return of the seized property. The motion shall be filed, set, served, heard and determined as provided in the New Mexico Rules of Civil Procedure.]

#### § 11-1-1-2[3][2] TEMPORARY RESTRAINING ORDERS IN GENERAL.

(A) *Intent.* Public nuisances are a real, direct and immediate threat to the health, safety, and welfare of the people of Albuquerque. Public nuisances cause immediate and irreparable injury, damages and losses to the citizens of Albuquerque and their governmental agencies. Actions at law are not always an adequate remedy, and the protection of public health, safety, and welfare may require the temporary restraining orders provided in this section. Ex parte temporary restraining orders are necessary to provide rapid relief from public nuisances without the delay entailed by an adversarial hearing and personal service and to prevent persons from [removing, concealing, destroying, ]encumbering, selling or transferring property that may be the subject of the remedies in this ordinance. The issuance and execution of temporary restraining orders under Subpart C of this ordinance shall not be deemed a bailment of property. The owner(s) of the property remains responsible for the maintenance and security of property subject to temporary restraining orders and shall be permitted reasonable access to the property for these purposes upon application to the court.

(B) *Form of proposed temporary restraining order.* Every temporary restraining order proposed by the city under Subpart C of this ordinance shall set forth the reason for its issuance, be reasonably specific in its terms, and describe in reasonable detail the acts and conditions

authorized, required or prohibited, and shall be in accordance with the New Mexico Rules of Civil Procedure.

§ 11-1-1-2[4][3] TEMPORARY RESTRAINING ORDERS; PUBLIC NUISANCES.

(A) ~~[Seizure of vehicles and other personal property not within buildings, and r][R]estraining orders to persons concerning real property, vehicles, other personal property and public nuisances.~~ The city ~~[shall][may]~~ petition the court to issue a temporary restraining order that makes the following orders for ~~[seizure of vehicles and other personal property not contained within buildings and ]~~restraining persons as to real property, vehicles, other personal property, and public nuisances, which orders shall be served and become effective pursuant to the New Mexico Rules of Civil Procedure:

~~[(1) The Mayor's designee or any police officer to seize and close vehicles and other personal property not contained within any building on real property, using any reasonable force necessary, and to place the same in police custody, or to retain the same in police custody if previously seized, in the constructive custody of the court, until further order of the court. All towing and storage costs shall be paid by the owner(s) of the vehicle or other personal property.~~

~~(2) Persons to deposit with the Mayor's designee or any police officer documents evidencing title, registration and keys, combination numbers, magnetic cards and other devices for accessing the vehicles and other personal property.]~~

~~[(3)[1) The Mayor's designee or any police officer or sheriff's deputy to post the summons, complaint, and temporary restraining order on the real property and to serve copies upon any person who reasonably appears or claims to hold any legal or equitable interest or right of possession in the property.~~

~~[(4)[2) To restrain all persons from removing, concealing, damaging, destroying, or selling, giving away, encumbering or transferring any interest in vehicles, other personal property, fixtures, structures, or real property, or the contents of the same, or using any of the property as security for a bond.~~

~~[(5)[3) [To require] [P][p]ersons holding any legal or equitable interest or right of possession in the real property, vehicle, or other personal property to take steps to abate the public nuisance and prevent it from recurring.~~

~~[(6)[4) The Mayor's designee or any police officer to take reasonable steps to abate the nuisance activity and prevent it from recurring.~~

~~[(7)[5) To require certain named individuals to stay at least 200 yards away from the property~~

at all times.

([8][6]) Any other orders that may be reasonably necessary to take the property into the court's constructive custody and to access and safeguard the property.

(B) ~~[Seizure][Closure]of real property[ and vehicles and other personal property within buildings].~~ In addition to the orders above, the city ~~[shall][may]~~ petition the court to include in the temporary restraining order the following orders with respect to the ~~[seizure][closure]~~ of real property and the contents of buildings, which orders shall be served and become effective pursuant to the New Mexico Rules of Civil Procedure:

(1) The Mayor's designee or any police officer to enter upon ~~[,seize,]~~ and close the real property, and buildings and structures upon the real property and the contents of the same, using any reasonable force necessary.

~~[(2) Persons holding any legal or equitable interest or right of possession in the real property or personal property to deposit with the Mayor's designee or any police officer documents evidencing title, registration and keys, combination numbers, magnetic cards and other devices and information for accessing the real property and any buildings, structures, vehicles and other personal property contained thereon until further order of the court.]~~

~~[(3)[2) [Persons holding any legal or equitable interest or right of possession in the real property to provide for the maintenance, utilities, insurance and security of the property. ]The city [shall][may] petition the court to permit [these ]persons [holding legal or equitable interest or right of possession in the real property to provide for the maintenance, utilities, insurance and security of the property reasonable ]access to perform these duties or, at the discretion of the City Attorney, to permit the Mayor's designee to perform these duties in lieu of the owners. If the Mayor's designee chooses to perform the duties, the owner(s) shall be responsible for all costs incurred.~~

~~[(3)[4) Where real property involved contains three or more apartments or other individualized rental units, the city may petition the court to order in lieu of closure, but in addition to the other orders provided above, that certain named individuals who committed, conducted, promoted, facilitated or aided the commission of a public nuisance be removed from the property, but that other persons lawfully on the premises be permitted to remain, and the property be placed in a special receivership as provided in this subsection. The city shall request that a receiver appointed ex parte by the court take possession of the property to the exclusion of the owners and other persons holding any legal or equitable interest and their managers and agents~~

then in possession, collect rents from the tenants, and pay the operating expenses, taxes, utilities, and maintenance expenses on the property including the cost of abating public nuisances and preventing the same from recurring. The receiver shall not pay the principal or interest on any note, deed of trust, mortgage, installment land contract or similar instrument, and these obligations shall remain in the real property. The city shall petition the court to periodically award the receiver reasonable fees for his or her services to be paid out of the rents, profits, and income. The receiver should account for all income and expenses in accordance with the laws of New Mexico. The city shall petition the court to order the defendants to pay the fees and expenses of the receiver, utilities, maintenance, security, operating expenses, taxes, insurance and other reasonable expenses related to the property to the extent that the rents, income, and profits of the property are insufficient to defray the same. The receiver appointed ex parte shall not be replaced except upon the stipulation of all parties. The city may petition the court to make other reasonable orders consistent with these provisions for the administration of this special receivership.

(~~4~~)(~~5~~) Any other orders that may be reasonably necessary to access, maintain, and safeguard the property.

§ 11-1-1-2(~~4~~)(~~5~~) MOTION TO VACATE OR MODIFY TEMPORARY RESTRAINING ORDER[ OR FOR RETURN OF SEIZED PROPERTY].

Any defendant or any person holding any legal or equitable interest or right of possession in any property [~~seized or~~]restrained under this ordinance may file a motion to vacate or modify the temporary restraining order[ or for return of seized property]. Proceedings on these motions shall be in accordance with the New Mexico Rules of Civil Procedure and applicable laws.

§ 11-1-1-2(~~5~~)(~~6~~) REMEDIES FOR PUBLIC NUISANCES.

Where the existence of a public nuisance is established in a civil action under Subpart C of this ordinance, the city [~~shall~~](may) petition the court to enter permanent prohibitory and mandatory injunctions requiring the defendant to abate the public nuisance and take specific steps to prevent the same and other public nuisances from occurring on the real property[, in the vehicle], or using the real property[, vehicle or other personal property]. The permanent prohibitory and mandatory injunction requested by the city may allow the court to consider other remedies as necessary and provided by law to abate the public nuisance. The city [~~shall~~](may) also petition the court to order, as to any real property[, vehicle or other personal property] used to commit, conduct, promote, facilitate or aid the commission of [~~or flight from~~]any pub[li]c nuisance, the following remedies:

(1) *Closure ~~[and fencing]~~ of real property and destruction of certain structures.* That the real property be closed for a period of not less than one year and not more than three years from the date of the final judgment, plus any extension of that period caused by failure to comply with the conditions for release of the property set out below, and if the city requests, that certain structures upon the real property be destroyed [and sufficiently secure fencing be installed to prevent unauthorized entry onto the property]. [Should the structures have personal property within them, the property owner shall remove such personal property. Any personal property not removed from the structures within 48 hours notice of the city's intent to destroy the structures shall be deemed rubbish and subject to removal at the owner's expense.] The city may request the court to order the defendants to carry out the destruction of the structures [or the installation of secure fencing to prevent unauthorized entry onto the property].

~~[(A)]~~ The city ~~[shall]~~ [may] petition the court to order the defendants to provide for the maintenance, utilities, insurance, and security of the property during the period of closure, and that [,] at the end of the closure period, the real property be released to the owner only upon (a) payment of all expenses incurred by the city for ~~[seizure, ]~~ closure, utilities, security, access, destruction of buildings, maintenance, insurance, and other reasonable expenses; and (b) payment of all civil judgments under Subpart C; and (c) execution by all owners and other persons holding any legal or equitable interest or right of possession in the real property of a complete and unconditional release of the city and all of its employees and agents for liability for the ~~[seizure, ]~~ closure and damages to the property.

~~[(B)]~~ In the event that the owners and other persons holding any legal and equitable interest and rights of possession, or any of them, fail, neglect or refuse to pay the fees, expenses, and judgments, or to execute the release provided above, the property shall remain closed. ~~[However, if a year expires without the owner making payment, the property shall then forfeit to the city.]~~ The issuance and execution of the closure order shall not be deemed a bailment of property. The owner of the property remains responsible for the maintenance and security of property subject to the closure order and shall be permitted reasonable access to the property for these purposes upon application to the court.

(2) *Receivership of real property ~~[and destruction of certain structures]~~.* That [the real property be placed into a special receivership ]; ~~when the city so requests, in lieu of closure of real property, the real property be placed into a special receivership~~ [upon the city showing a violation of this ordinance will not be promptly remedied unless a receiver is appointed and that

such an appointment is in the best interest of public health, safety and welfare. Any receiver appointed under this section shall have their rights, duties and powers specified by the court in accordance with the provisions in this section].

[No receiver shall be appointed until the receiver furnishes a bond or other surety and provides proof of liability insurance as the court deems sufficient in the circumstances of the case. Upon appointment, the receiver shall promptly remedy all violations of this ordinance on the property and renovate the property, as reasonably necessary, so that it can be maintained in a safe and secure condition that does not cause blight to the surrounding community or threaten public health, safety or welfare. In order to secure payment of any costs incurred and repayment of any loans for repair, operation, maintenance, renovation or management of the property, the receiver shall have a lien on the property that is second in priority to all other municipal liens. No such lien shall be effective unless recorded in the Bernalillo County Clerk's Office.

The receiver shall be authorized to collect rent and shall apply the rent collected to payment of any repairs necessary to bring the property into compliance with the sanitary code and pay the property's necessary operation, maintenance, and management expenses, including insurance expenses and reasonable fees of the receiver, and then to payment of any unpaid taxes, assessments, penalties or interest. Any excess of income in the hands of the receiver shall then be applied to payments due any mortgagee or lienor of record.

The receiver shall file with the court and with all parties of record, on a bimonthly basis, an accounting of all funds received by and owed to the receiver, and all funds disbursed, and shall comply with such other reporting requirements mandated by court, unless, for cause shown, the court determines that less frequent or less detailed reports are appropriate.

Any receiver appointed pursuant to this section may be removed by the court upon a showing the receiver is not diligently carrying out the work necessary to bring the property into compliance with this ordinance or a showing it is in the best interest of public health, safety and welfare to remove the receiver.

Nothing in this section shall be deemed to relieve the owner of property of any civil or criminal liability or any duty imposed by reason of acts or omissions of the owner, nor shall appointment of a receiver suspend any obligation the owner or any other person may have for payment of taxes, of any operating or maintenance expense, or of mortgages or liens, or for repair of the premises.]]  
for a period not less than one year and not more than three years from the date of final judgment, plus any extension of that period caused by a failure to comply with the conditions for release of



the property set out below, and, if the city requests, that certain structures be destroyed. The city may request the court to order the defendants to carry out the destruction. The city shall petition the court to order the defendants to provide for and pay the maintenance, utilities, security, operating expenses, taxes, insurance, receivership fees, and other reasonable expenses related to the property to the extent that the rents, profits, and income of the property under receivership is insufficient to defray these expenses, and that at the end of the receivership period, the real property shall be released to the owner only upon (a) payment of all expenses incurred by the city for seizure, closure, utilities, security, access, maintenance, insurance, taxes, receivership and receivership fees, the costs of destroying structures, and other reasonable expenses not covered by the rents, profits, and income under receivership; and (b) payment of all civil judgments under Subpart C; and (c) execution by all owners and other persons holding any legal or equitable interest or right of possession in the real property of a complete and unconditional release of the city and all of its employees and agents, including the receiver, for any liability for the seizure, closure and receivership and damages to the property.

In the event that the owners and other persons holding any legal or equitable interest or right of possession in the real property, or any of them, fail, neglect or refuse to pay the fees, expenses, and judgments, or to execute the release provided above, the property shall remain under the receivership or be closed as provided in Subsection (1) above. The issuance and execution of the receivership order shall not be deemed a bailment of property. The owners of the property remain responsible for the maintenance and security of the property subject to the receivership order and shall be permitted reasonable access to the property for these purposes upon application to the court. In the event that the income, rents and profits of the receivership, after a complete accounting, exceed the costs and expenses of access, seizure, closure, maintenance, security, taxes, insurance, destruction of structures, the receivership and receivership fees, and all other reasonable expenses related to the property, the city shall petition the court to order the receiver to expend the remainder first on specific improvements at the property that will abate public nuisances or prevent them from recurring, and second, to pay the civil judgments due in the case.

(3) *Impoundment of vehicles.* That the vehicle be impounded for a period of not less than six months and not more than one year from the date of the final judgment plus any extension of the period caused by a failure to comply with the conditions for release of the vehicle set out below; and that at the end of the closure period, the vehicle shall be released to the owners only upon:

(a) payment of all towing fees, storage fees, and civil judgments under Subpart C; and (b) execution by the owners and lienors of a complete and unconditional release of the city and all of its employees and agents for the closure and any and all damages to said vehicle.

In the event that the owners, lienors, or any of them fail, neglect or refuse to pay the fees, expenses, and judgments when due, and execute the release provided above, the vehicle shall be forfeited to the city. The issuance and execution of the closure order shall not be deemed a bailment of property.]

([4][3]) ~~[Destruction]~~[Removal] of vehicles. [Where the city so requests, in lieu of impoundment of the vehicle, that the vehicle be destroyed][In the event the City petitions the court to have real property closed or destroyed pursuant to this ordinance, the City may also petition the court to order the defendants to remove all vehicles from the property prior to its closure or destruction. Any vehicles not removed from the real property within 48 hours of the real property's closure or destruction shall be subject to removal at the owner's expense.]

~~[(5) Forfeiture of personal property. That the personal property be forfeited to the city.]~~

#### § 11-1-1-2[7][6] JUDGMENT FOR COSTS AND ATTORNEYS' FEES.

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

#### § 11-1-1-2[7][8] SUPPLEMENTARY REMEDIES FOR PUBLIC NUISANCES.

In any action in which probable cause for the existence of a public nuisance is established, in the event that the defendants, or any one of them, fails, neglects or refuses to comply with the court's temporary restraining orders, receiverships, closures, destruction orders, and other orders, the city may petition the court to, in addition to or in the alternative to the remedy of contempt, permit the city to enter upon the real property, vehicle or other personal property, and abate the nuisance, take steps to prevent public nuisances from occurring, and/or perform other acts required of the defendants in the court's temporary restraining orders and other orders.

#### § 11-1-1-2[9][8] LIEN FOR JUDGMENTS.

In addition to the remedies provided in Subpart C of this ordinance, the city shall have a lien against the real property[, vehicles] and other personal property on or in which any public nuisance occurred or which was used to commit, conduct, promote, facilitate, or aid in the commission of any public nuisance for the total of all judgments imposed for costs and attorneys' fees. The city may record a statement of this lien with the County Clerk.

§ 11-1-1-~~[30]~~[29] STIPULATED ALTERNATIVE REMEDIES.

(A) The city and any defendants to an action under Subpart C of this ordinance may voluntarily stipulate to temporary restraining orders, ~~[seizures, ]~~closures, receiverships, forfeitures, destruction, judgments, liens, and other remedies, temporary or permanent, that are different or altered from those provided in Subpart C of this ordinance, including ~~[but not limited to ]~~the following:

(1) Shorter or less stringent temporary restraining orders, closures and receiverships.

(2) Receiverships on other terms, including ~~[but not limited to ]~~terms providing for the payment of secured indebtedness on the subject property, removal or substitution of the receiver, and other terms.

(3) Nondestruction of buildings, other structures, vehicles and other personal property.

~~[(4) Release of seized real property to the party currently entitled to possession, or to an agent, manager, or receiver appointed under the stipulation, after the public nuisance has been fully abated, steps have been taken to prevent public nuisances from recurring, sufficient action has been taken to deter public nuisances, and the public interest is protected, or a suitable plan to accomplish these goals has been agreed to.]~~

~~[(4)[5)]~~ Reduction or waiver of civil judgments and liens.

~~[(5)[6)]~~ Other reasonable stipulations designed to abate the public nuisance, prevent public nuisances from recurring, deter public nuisance activity, and protect the public interest.

(B) Any stipulations for alternative remedies shall be made by an order of the court.

§ 11-1-1-30 CIVIL FINE.

(A) The Mayor's designee may impose a civil fine of \$200 for a first failure to cure violations of this article, \$300 for a second failure to cure violations of this article and \$500 for a third or subsequent failure to cure violations of this article after notice has been issued pursuant to Section 11-1-1-21. Failure to pay the fine, appeal the fine, or prevail at an administrative hearing challenging the fine shall allow the Mayor's designee to place a lien upon the subject property or any asset owned by the subject property's owner. The Mayor's designee may also choose to

collect on the fine through any other method allowed by law.

(B) General. Whenever the Mayor's designee imposes a civil fine for violations of this article, the Mayor's designee shall issue of notice of civil fine directed to the owner of the subject property, their agent and/or responsible party, and, where appropriate, to the occupant of the subject property, as shown on the records of the Bernalillo County Assessor and the Mayor's designee. The notice of civil fine shall contain:

(1) The street address and a legal description sufficient for identification of the premises upon which the building is located;

(2) A statement that the Mayor's designee has found the subject property to be in violation of this article;

(3) A concise description of the conditions found to render the subject property dangerous under the provisions of this code;

\_\_\_\_\_ (4) The amount of the fine assessed;

\_\_\_\_\_ (5) A statement that the fine must be paid in full within 30 days of the date of the notice;

\_\_\_\_\_ (6) Instructions for how the fine can be paid; and

(7) A statement advising that any person having any title or legal interest in the subject property may appeal from the notice of civil fine to the Office of Administrative Hearings, provided the appeal is made in writing as provided in this article, and filed with the Office of the Administrative Hearings within 15 days of service of notice of civil fine, and that failure to timely appeal the notice of civil fine shall constitute a waiver of the right to appeal.

\_\_\_\_\_ (C) Method of Service.

(1) Service of the notice of civil fine shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person and owner, responsible party or identified agent at their address as shown on the records of the Bernalillo County Assessor or as known to the Mayor's designee. If no address of any such person so appears or is known to the Mayor's designee, then a copy of the notice of civil fine shall be so mailed, addressed to such person, at the address of the building involved in the proceedings and posted thereon.

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

(C) Proof of Service. Proof of service of the notice of civil fine shall be certified by written

affidavit executed by the person effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgement of receipt by certified mail, shall be affixed to the copy of the notice and order retained by the Mayor's designee.

(D) Appeal. The owner may appeal a civil fine issued pursuant to this article. The request for appeal and the hearing shall comply the procedures outlined in the Independent Office of Hearings Ordinance, ROA 1994, Sections 2-7-8-1 to -9.

§ 11-1-1-31 EMERGENCY ABATEMENT.

(A) Notwithstanding any other provision in this code if, in the opinion of the Mayor's designee, the conditions at a property constitute an imminent hazard, the Mayor's designee may order immediate abatement of the hazard without notice. Such abatement of an imminent hazard shall be limited to the minimum work necessary to remove the hazard and may include disconnection of utilities, securing of the structures, installation of fencing or emergency cleaning of the property to abate the hazard.

(B) The city shall pay the cost and expense of such abatement from any appropriation made for that purpose.

(C) A lien shall be recorded with the Bernalillo County Clerk's Office for all the costs incurred by the city as a result of abating the property.

(D) Whenever the Mayor's designee finds that any structure contains an imminent hazard or health hazard, the inspector may declare such structure unfit for occupancy as provided in the Uniform Housing Code ("UHC"), ROA 1994, Sections 14-3-1-1 to 14-3-4-11, and order it to be vacated or to remain vacant. A structure declared unfit for occupancy and ordered vacated or to remain vacant under the provisions of this section shall not be leased, rented or occupied, until it has been inspected and deemed fit for occupancy by the UHC. The city shall re-inspect, for the purpose of re-occupancy, within five business days of the receipt of a written request by the owner, their agent or responsible party.]

§ 11-1-1-3[4][2] OTHER SEIZURES, CLOSURES, FORFEITURES AND CONFISCATIONS.

Nothing in Subpart C of this ordinance shall be construed to limit or forbid the seizure, confiscation, closure, destruction or forfeiture of property now or hereafter required, authorized or permitted by any other provision of law. Nothing in this ordinance shall be construed as requiring that evidence and property seized, confiscated, closed, forfeited or destroyed under other provisions of law be subjected to the remedies and procedures provided in this ordinance.

*SUBPART D:*

*DRUG LABORATORY SITE REMEDIATION OF CONTAMINATION*

§ 11-1-1-40 TITLE.

This subpart shall be known and may be cited as the "Cleanup of Clandestine Drug Laboratory Sites Ordinance."

§ 11-1-1-41 FINDINGS AND INTENT.

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

§ 11-1-1-42 DEFINITIONS.

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

*CLANDESTINE DRUG LABORATORY* . Property on which methamphetamine, ecstasy, LSD or any other controlled substance is being manufactured or on which there is an attempt to manufacture, or where a person is arrested for having on any property any chemicals or equipment used in manufacturing methamphetamine, ecstasy, LSD or any other controlled substance. In the case of a space rental mobile home or recreational vehicle park, clandestine drug laboratory means the mobile home or recreational vehicle in which methamphetamine, ecstasy, LSD or any other controlled substance is being manufactured or where a person is arrested for having in the mobile home or recreational vehicle any chemicals or equipment used in manufacturing methamphetamine, ecstasy, LSD or any other controlled substance. *CLANDESTINE DRUG LABORATORY* shall include any place or area where chemicals or other waste materials used in clandestine drug laboratories have been located.

*CONTROLLED SUBSTANCE*. Any drug or substance or counterfeit substance listed in the Controlled Substances Act, Chapter 30, Article 31 NMSA 1978 or regulations adopted thereunder.

*DRUG LABORATORY SITE REMEDIATION FIRM*. A [professional] firm that [is certified by the

Albuquerque Police Department and the City Environmental Health Department and that ]performs remediation of residual contamination from the manufacture of methamphetamine, ecstasy, LSD or any other controlled substance or the storage of chemicals or equipment used in manufacturing methamphetamine, ecstasy, LSD or any other controlled substance.

*ECSTASY (3,4-METHYLENEDIOXY AMPHETAMINE).* This term has the same meaning prescribed in Section 30-31-6 NMSA 1978 and includes any of the precursor chemicals, regulated chemicals, other substances or equipment used in the unlawful manufacture of Ecstasy and any derivatives thereof.

*GROSS CONTAMINATION.* The chemicals, equipment and other items that are found in a clandestine drug laboratory and that are removed by a law enforcement officer or law enforcement agency.

*INDUSTRIAL OR ENVIRONMENTAL HYGIENIST FIRM.* A [professional ]firm that [is certified by the Albuquerque Police Department and the City Environmental Health Department to ]conduct[s] pre-remediation testing and post-remediation testing for the remediation of residual contamination from the manufacture of methamphetamine, ecstasy, LSD, or any other controlled substance or the storage of chemicals or equipment used in manufacturing methamphetamine, ecstasy, LSD or any other controlled substance.

*LAW ENFORCEMENT OFFICER.* Any employee of a police or public safety department administered by the state or any political subdivision of the state where the employee is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this state as defined in Section 30-20A-2D NMSA 1978, and specifically includes Albuquerque Police Department nuisance abatement inspectors.

*LSD (LYSERGIC ACID DIETHYLAMIDE).* This term has the same meaning prescribed in Section 30-31-6 NMSA 1978 and includes any of the precursor chemicals, regulated chemicals, other substances or equipment used in the unlawful manufacture of LSD and any derivatives thereof.

*METHAMPHETAMINE.* This term has the same meaning prescribed in Section 30-31-7 NMSA 1978 and includes any of the precursor chemicals, regulated chemicals, other substances or equipment used in the unlawful manufacture of methamphetamine and any derivatives thereof.

*OWNER.* Any person, firm, corporation or other entity that owns, in whole or in part, the property subject to this subpart.

*PROPERTY.* Real or personal property, including the area within a structure and the area that

surrounds a structure and that is within the land boundary or property lines of any of the following:

(1) Property that can be used for residential purposes or is occupied by people for any length of time for any purpose.

(2) Property that is governed by the Uniform Owner-Resident Relations Act, Sections 47-8-1 et seq. NMSA 1978, or the Mobile Home Park Act, Sections 47-10-2 et seq. NMSA 1978.

(3) A mobile home as defined in Section 47-10-2 NMSA 1978.

(4) A recreational vehicle as defined in Section 66-1-4.15 NMSA 1978 and for purposes of this subpart, "recreational vehicle" shall also include a recreational travel trailer as defined in Section 66-1-4.15 NMSA 1978.

(5) A vehicle, as defined in § 8-5-2-1  
<[https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque\\_nm/0-0-0-44316](https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque_nm/0-0-0-44316)> ROA 1994.

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

(1) If gross contamination is removed from a house, mobile home or recreational vehicle and the notice of removal is posted for the entire house, mobile home or recreational vehicle, then the entire house, mobile home or recreational vehicle, not just the room or rooms in which the gross contamination is found shall be deemed the residually contaminated portion of the property.

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

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

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

#### § 11-1-1-43 DECLARATION OF PUBLIC NUISANCE.

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

#### § 11-1-1-44 CLANDESTINE DRUG LABORATORIES.

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

(1) At the time of the discovery or arrest, shall deliver a copy of the notice of removal pursuant to subsection (B) of this section to the owner of the property if the owner is on the site at the time of delivery, the on-site manager if the manager is on the site at the time of delivery or the



on-site drop box if available. In the case of a tenant-owned unit in a space rental mobile home or recreational vehicle park, the officer shall deliver a copy of the notice of removal to the occupant of the unit if the occupant is on site at the time of delivery and to the on-site park landlord if the park landlord is on site at the time of delivery.

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

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

(4) The notice of removal shall be sent to the following:

(a) The address of the owner and the owner of the mobile home or recreational vehicle park as shown on file with the county assessor.

(b) The Albuquerque Environmental Health Department.

(c) The Albuquerque Fire Department.

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

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

(6) After the law enforcement officer removes all persons pursuant to subsection (A)(5) of this section, the law enforcement officer shall affix the notice of removal in a conspicuous place on the property or, in the case of a space rental mobile home or recreational vehicle park, on the unit located on the property.

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

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

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

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

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

(4) The date of the seizure or arrest.

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

(6) The name of the law enforcement agency or other agency that seized the clandestine

drug laboratory or made the arrest and the agency's contact telephone number.

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

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

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

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

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

(C) *Remediation by owner.* The owner of the property shall remediate the residually contaminated portion of the property by retaining an industrial or environmental hygienist firm to pre-test the property to determine the extent of the contamination and the nature of the required remediation. When the industrial or environmental hygienist firm determines that remediation is required, the owner shall retain a drug laboratory site remediation firm to conduct the remediation. The industrial or environmental hygienist firm and the drug laboratory site remediation firm shall be separate and unaffiliated business entities. ~~[Both firms shall be approved and currently registered with the Albuquerque Police Department and the City Environmental Health Department during the time they participate in the remediation of residual contamination.]~~ The owner shall retain the industrial or environmental hygienist firm and the drug laboratory site remediation firm within 30 days of the day of delivery of personal service of the notice of removal or within 35 days of the date the notice of removal is mailed by certified mail or posted on the property. Remediation shall be completed in accordance with the standards for remediation of residual contamination adopted by the Albuquerque Police Department and the City Environmental Health Department within 60 days of the day of delivery of personal service of notice to the owner or within 65 days of the date notice is mailed by certified mail to the owner or for such other period of time that is approved in writing by the Albuquerque Police Department.

(D) *Remediation procedures.* An industrial or environmental hygienist firm and the drug laboratory site remediation firm retained to remediate the residually contaminated portion of any property pursuant to this section shall comply with the best practices and standards for remediation of residual contamination adopted by the Albuquerque Police Department and the City Environmental Health Department. The industrial or environmental hygienist firm shall notify the owner whenever the firm determines that any structure requires remediation of contamination as required in this section. The owner shall send such notification of required remediation of contamination to Albuquerque Police Department, the City Environmental Health Department and the city's Chief Building Official. Within one ~~[city working]~~ [business] day after the remediation is complete, the drug laboratory site remediation firm shall notify the Albuquerque Police Department, the City Environmental Health Department and the industrial or environmental hygienist firm that the property is ready for final inspection. After inspection by the industrial or environmental hygienist firm and approval by the Albuquerque Police Department and the City Environmental Health Department, the industrial or environmental hygienist firm shall issue a final clearance document certifying that remediation of the residually contaminated portion of the property was completed pursuant to the standards for remediation of residual contamination and shall deliver the certification document or send the document by certified mail to the owner. The

owner shall provide a copy of the certification of completed remediation to each person and entity listed in subsection (A) (4) of this section, the city's Chief Building Official and the law enforcement agency that issued the notice under that subsection. After the final clearance document has been issued, both of the following apply:

(1) The owner, landlord, lien holder or manager of the property is not required to comply with subsection (G) of this section.

(2) Any person may use, enter, occupy, rent or sell the property.

It shall be the responsibility of the owner of the property to file with the County Assessor the document stating that the residually contaminated portion of the property has been remediated. ~~The owner~~ and neither the city, the industrial or environmental hygienist firm nor the drug laboratory site remediation firm shall [also] be responsible for [such filing or] the costs associated with filing. The issuance of the document certifying that remediation of the residually contaminated portion of the property was completed pursuant to the standards for remediation of residual contamination shall be a prerequisite for a certificate of occupancy or any city required building inspection and shall not be in lieu of a certificate of occupancy or any city required building inspection.

(E) *Contaminated vehicles.* If gross contamination is removed from a vehicle, the notice of removal required in subsection (B) of this section shall be sent by certified mail to the owner of record and lien holder of record, if any exists. Impounded vehicles containing residual contamination shall not be released to the owner or lien holder until the remediation has been completed and paid for by the owner or lien holder. Remediation shall be accomplished by following the same procedures as set forth in subsection (D) of this section. Remediation costs as defined in subsection (J) of this section shall be in addition to any other towing, storage, or other impoundment fees.

~~[(F) *Record retention.* The City Environmental Health Department shall maintain and make available on request all notices of removal and any documents that are created pursuant to subsection (D) of this section. A retention schedule for such documents shall be established by the City Clerk.]~~

~~[(F)[G] *Notice to buyers and occupants.* The following notice requirements apply until the remediation is complete as provided in subsection (D) of this section:~~

(1) Within five days after a buyer signs a contract to purchase property, the owner shall notify the buyer in writing that methamphetamine, ecstasy, or any other controlled substance was manufactured on such property or that an arrest, as described in subsection (A) of this section, was made. The buyer shall acknowledge receipt of the notice. A buyer may cancel the purchase contract within five days after receiving the notice without liability. If the owner does not comply with this paragraph, the buyer may void the purchase contract.

(2) Landlords and their agents shall provide written notice to all prospective tenants for dwelling units that the dwelling unit was the subject of a notice of removal, as described in subsections (A) and (B) of this section, that methamphetamine, ecstasy, or any other controlled substance was manufactured on the property or that an arrest, as described in subsection (A) of this section, was made. The tenant shall acknowledge receipt of the notice before taking possession of the property or before signing a rental agreement for the property. The notice shall be attached to the rental agreement. If the landlord or their agent does not comply with this paragraph, the tenant may void the rental agreement. For purposes of this paragraph, "dwelling unit" shall include but not be limited to mobile homes and recreational vehicles.

(3) Before a customer occupies a room that was the subject of the notice of removal, as described in subsection (A) of this section, the owner or manager shall notify the customer in writing the room was the subject of a notice of removal as described in subsection (A) and (B) of

this section, that methamphetamine, ecstasy, LSD or any other controlled substance was manufactured in the room or that an arrest, as described in subsection (A) of this section, was made. The customer shall acknowledge receipt of the notice before taking possession of the room and before signing a room rental agreement. If the owner or manager does not comply with this paragraph, the customer may void the agreement.

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

(5) When a law enforcement officer has ordered the removal of all persons from property pursuant to § 11-1-1-44(A)(5), owners, landlords and their agents shall continue to be subject to the requirement to not permit people from occupying such property. Compliance with this subsection shall not eliminate the requirement that the property not be occupied.

(G)(H) *Mobile home or recreational vehicle space rental parks.* If a mobile home or recreational vehicle in a space rental park contains a clandestine drug laboratory, the landlord of the park, on receipt of a notice pursuant to subsection (A) of this section, shall notify the owner and lienholder of record of the unit to remove the unit from the park within 30 days. This provision shall not apply when the owner of the contaminated mobile home or recreational vehicle is also the owner of the mobile home or recreational vehicle space rental park in which such contaminated mobile home or recreational vehicle is located. If the unit is not removed within 30 days, the landlord of the park shall remediate the contamination following the requirements set forth in subsections (C) and (D) of this section.

(H)(I) *Restitution to owner.* A person who operates a clandestine drug laboratory and who is not the owner of the property shall pay restitution to the owner of the property for all costs that the owner incurred to remediate the property and, in the instance of a mobile home or recreational vehicle, the cost incurred by the owner of a space rental park for moving and/or remediating such property.

(I)(J) *Remediation by city.* If an owner of property, a vehicle owner, a vehicle lien holder or an owner of a mobile home or recreational vehicle space park, as described under subsection (H) of this section, fails to comply with the remediation of the residually contaminated property or portion of the property as required in this section, the city may remediate of the residually contaminated portion of the property or seek a court order requiring the owner to remediate in the manner required in this section. If the city is unable to locate the owner within ten days after the issuance of the Certificate of Substandard Property, the city may proceed with remediation. If the city remediates the contamination, the owner shall pay to the city all costs related to such remediation. If the owner fails to pay the city for its costs of remediation, the city shall be entitled to file a lien against such property for the costs related to the remediation and bring legal action against the owner for such remediation costs. Remediation costs shall include ~~but are not limited to~~ the expense for posting, physical security of the contaminated site, notification of affected people, businesses or any other entit[y][ies], expenses related to the recovery of cost, laboratory fees, cleanup services, costs for testing for residual contamination, removal costs, and cost incurred for an industrial or environmental hygienist firm and a drug laboratory site remediation firm. When a contaminated vehicle is impounded, the vehicle shall not be released to the owner or a lien holder until remediation is completed and paid by the owner or lien holder and

impoundment fees are paid by the owner or lien holder. Remediation costs for vehicles in which gross contamination is found shall include the costs for testing for residual contamination regardless of whether residual contamination is actually required to be remediated. Impoundment fees shall include those fees defined as impoundment charges in § 8-5-2-1

~~<[https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque\\_nm/0-0-0-44316](https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque_nm/0-0-0-44316)> ROA 1994. The city or its contractors may remove property as part of its remediation effort.~~

~~§ 11-1-1-45 PENALTIES.~~

~~— (A) If an owner fails to provide any notice required by this subpart, the owner shall be subject to imprisonment up to 90 days and/or a fine of up to \$500 and is liable for any harm resulting from the owner's failure to comply with the requirements of this subpart.~~

~~— (B) A person who knowingly violates a notice of removal that is issued by a law enforcement officer under this subpart is subject to imprisonment up to 90 days and/or a fine of up to \$500 for each day such person fails to comply with the notice of removal.~~

~~— (C) All other violations of this subpart shall be subject to the penalty provisions of § 1-1-99 <[https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque\\_nm/0-0-0-633](https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque_nm/0-0-0-633)> ROA 1994.]”~~

SECTION 2. § 9-8-3 of the Albuquerque Weed and Anti-Litter Ordinance is hereby amended as follows:

“§ 9-8-3 DEFINITIONS.

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

*AIRCRAFT.* Any contrivance now known or hereafter invented used or designated for navigation or for flight in the air. The word "aircraft" shall include helicopters and lighter-than-air dirigibles and balloons.

*APPROPRIATE PRIVATE RECEPTACLE.* A litter receptacle with a fireproof interior capable of containing and withstanding fire.

*AUTHORIZED PRIVATE RECEPTACLE.* A litter storage and collection receptacle as required and authorized in the solid waste collection regulations set forth in §§ 9-10-1-1 et seq.

*COMMERCIAL HANDBILL.* Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter of literature:

- (1) Which advertises for sale any merchandise, product commodity, or thing; or
- (2) Which directs attention to any business or mercantile or commercial establishments or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales; or
- (3) Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or

profit.

(4) Which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor.

(5) Newspaper as defined herein is and to be construed to be included within the definition of *COMMERCIAL HANDBILL*.

*GARBAGE*. Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

*LITTER*. "Garbage," "refuse" and "rubbish" as defined herein and all other waste material which, if thrown or deposited as herein prohibited tends to create a danger to public health, safety and welfare.

~~[MAYOR]~~~~[MAYOR'S DESIGNEE]~~. The Mayor[ of the City of Albuquerque] or [anyone designated by the Mayor to take the actions authorized under this ordinance]~~[his authorized representative]~~.

*NEWSPAPER*. Any newspaper of general circulation as defined by general law, any newspaper duly entered with the Post Office Department of the United States in accordance with Federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law; and in addition thereto shall mean and include any periodical or current magazine regularly published with not less than four issues per year and sold to the public.

*NONCOMMERCIAL HANDBILL*. Any printed or written matter, any sample, or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter of literature not included in the aforesaid definitions of a commercial handbill or newspaper.

*OWNER*. Owner, agent, lessee or occupant or person having charge or control of the property.

*PARK*. A park, reservation, playground, beach, recreation center, zoo, golf course, or any other public area in the city, owned or used by the city and devoted to active or passive recreation.

*PERSON*. One or more persons, natural persons, corporations, partnerships, associations, joint stock companies, societies and all other entities of any kind capable of being sued.

*PRIVATE PREMISES*. Any dwelling, house, building, or other structure designed or used either wholly or in part for private residential purposes, whether inhabited or temporary or continuously uninhabited or vacant and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant or such dwelling, house, building, or other structure.

*PUBLIC PLACE.* Any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, sources, spaces, grounds and buildings.

*REFUSE.* All putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, inoperative vehicles and appliances, and solid market and industrial wastes.

*RUBBISH.* ~~[Nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, smoking tobacco products, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, and similar materials.]~~ [All waste, including ashes, bottles, cans, carcasses of dead animals, cardboard, cloth, crockery, human or animal excrement, glass, abandoned or unusable household furnishings or appliances, metals, plastics, tree branches and limbs, waste building materials or other items discarded in such a manner as to create a reasonable likelihood of becoming a harborage for insects or vermin or disease, or otherwise create a health or safety hazard.]

*SMOKING TOBACCO PRODUCT.* Tobacco leaves smoked in the form of a cigar or cigarette.

*VEHICLE.* Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.

*WEEDS.* All rank, noxious, poisonous, harmful, unhealthful vegetation, deleterious to health, and shall include ~~[but is not limited to ]~~the following named plants:

- (1) Pigweed (*Amaranthus retroflexus*).
- (2) Russian Thistle (*Salsola pestifer*).
- (3) Ragweeds (*Ambrosia spp.*).
- (4) Lambsquarter. (*Kenopodium spp.*).
- (5) Kochia.
- (6) London Rocket (*Sisymbrium irio*).
- (7) Flix Weed (*Descurainia sophia*).
- (8) Tansy Mustard (*Descurainia pinnata*).
- (9) Spurge.
- (10) Silverleaf Nightshade (*Solanum elaeagnifolium*).
- (11) Puncture Vine.
- (12) Field Bind Weed (*Convolvulus arvensis*).
- (13) Purslane.
- (14) Hoary Cress.

(15) Yellow Foxtail (*Setaria glauca*).

(16) Green Foxtail (*Setaria Viridis*).

The [Mayor][Mayor's designee] is hereby authorized and delegated the authority and duty to determine if any other plants, due to their unhealthy or dangerous attributes or consequences, should be placed on the list of weeds as defined herein and shall put such plants on said list if, after a hearing based on the evidence before him it appears that such plants do come within the meaning of the term weeds as hereinbefore set out.”

SECTION 3. § 9-8-8 of the Albuquerque Weed and Anti-Litter Ordinance is hereby amended as follows:

“§ 9-8-8 MERCHANTS' DUTY TO KEEP SIDEWALKS AND PARKING AREAS FREE OF LITTER. It shall be the responsibility of the person in charge of a place of business to maintain the sidewalk area adjacent to his place of business and his private parking area, if any, used by his patrons for parking, in a reasonably litter free condition. If, in the opinion of the [Mayor][Mayor's designee], the amount of litter in said areas amounts to a nuisance due to odors or eyesore characteristics the [Mayor][Mayor's designee] shall notify the person in charge to provide adequate, approved litter receptacles located so as to be convenient to the patrons of the place of business and/or to parking areas. The person in charge of such business shall be responsible for providing said litter receptacles and be responsible for emptying such containers as often as is necessary to prevent their becoming a nuisance. In no event shall the litter located on sidewalks and driveways adjacent to a place of business be allowed to be swept into the gutters or streets of the city.”

SECTION 4. §§ 9-8-25 et seq of the Albuquerque Weed and Anti-Litter Ordinance are hereby amended as follows:

“§ 9-8-25 NOTICE TO CUT AND REMOVE.

If the provisions of this article regarding removal of weeds or litter are not complied with, the [Mayor][Mayor's designee] or his authorized representative shall notify the owner of any occupied or unoccupied lot or tract of land to comply with the provisions of this article. The notification to the owner of any such lot or tract of land shall be in writing. In the event such owner of such lot or tract of land cannot be determined or the owner shall be a nonresident of the city, such notice may be served by posting a copy of the written notice upon the premises.

§ 9-8-26 WHEN CITY TO REMOVE.



[In those cases where the owner of any occupied or unoccupied lot or tract of land is a nonresident of the city or cannot be determined and] [Where] compliance with the provisions set forth in the notice has not occurred within ten days, the [Mayor][Mayor's designee] shall cause such weeds [or litter] to be cut and the cuttings or any accumulation of weeds or litter removed. [If the owner of any such lot or tracts of land is notified in writing as provided and fails to comply with the provisions of this article within ten days, the Mayor may cause such weeds or litter to be cut and the cuttings or any accumulation of weeds or litter removed. In any event, s][S]hould it appear to be a matter of public necessity for health or safety reasons, the [Mayor][Mayor's designee] may give notice that the weeds or litter must be cut or removed immediately[.] in which event[.] should there be noncompliance[.] the [Mayor][Mayor's designee] is authorized to cause such weeds [or litter] to be cut and the cuttings or any accumulation of weeds or litter removed immediately. The actual cost of the cutting or removal of weeds or litter plus any other penalties or costs allowed by law in connection therewith, under any of the circumstances herein set out, shall become a lien upon the property from which such weeds or litter were removed in the manner prescribed by law.

#### § 9-8-27 METHOD OF REMOVAL.

The approved methods of controlling weeds shall be mowing, cutting, digging, or other methods designed to remove the weeds but not disturb other vegetation or unnecessarily disturb the soil. The scraping and tillage of lots and tracts of land is prohibited unless permission of the [Mayor][Mayor's designee] is first obtained; except, that scraping and tillage as part of normal construction activities or as ground preparation for agriculture or landscaping activities shall be allowed. The [Mayor][Mayor's designee] shall allow scraping and tillage of lots or tracts of land when this will not detract from or violate the clear intent and purpose of this article.

#### § 9-8-28 PENALTY.

(A) Any person who violates any of the provisions of this article, excluding § 9-8-32, shall be deemed guilty of a petty misdemeanor and, upon conviction thereof, shall be subject to the penalty provisions set forth in § 1-1-99 of this code of ordinances to include a minimum fine of \$250. Any person deemed guilty of a subsequent violation shall be subject to a minimum fine of \$350 and then \$500 for each violation thereafter. Community service may be imposed in lieu of or in addition to any such fine. Every violation shall be a separate misdemeanor.

(B) Any person who violates the provisions of § 9-8-32 regarding smoking tobacco product litter shall be subject to the penalty provisions set forth in § 1-1-99 of this code of ordinances to include a minimum fine of \$250. Any person deemed guilty of a subsequent violation of § 9-8-32

shall be subject to a minimum fine of \$500 for each violation thereafter.

[ (C) The Department may impose a civil fine for violations of this article that have not been adequately cured within a reasonable time after an initial Notice to Cut and Remove, pursuant to Section 9-8-25. The amount of the fines are: \$200 for a first violation of this article; \$300 for a second violation of this article; and \$500 for a third or subsequent violation of this article. Notice of the civil fine shall be appealable under the administrative appeal procedures of this article. Failure to pay the fine, appeal the fine, or prevail at an administrative hearing challenging the fine shall allow the Department to place a lien upon the subject property or any other asset owned by the subject property's owner. The Department may also choose to collect on the fine through any other method allowed by law.

§ 9-8-29 NOTICE OF CIVIL FINE.

(A) General. When the Department imposes a civil fine for violations of this article, the Department shall issue a notice of civil fine directed to the owner of the subject property, their agent and/or responsible party, and, where appropriate, to the occupant of the subject property as shown on the records of the Bernalillo County Assessor and the Department's records. The notice of civil fine shall contain:

(1) The street address and a legal description sufficient for identification of the premises upon which the building is located;

(2) A statement that the Department has found the subject property to be in violation of this article;

(3) A concise description of the conditions found to render the subject property dangerous under the provisions of this code;

\_\_\_\_\_ (4) The amount of the fine assessed;

(5) A statement that the fine must be paid in full within thirty (30) days of the date of the notice;

\_\_\_\_\_ (6) Instructions for how the fine can be paid; and

(7) A statement advising that any person having any title or legal interest in the subject property may appeal from the notice of civil fine to the Office of Administrative Hearings, provided the appeal is made in writing as provided in this code, and filed with the Office of the Administrative Hearings within seven days of service of notice and order, and that failure to timely appeal the notice of civil fine shall constitute a waiver of the right to appeal.

\_\_\_\_\_ (B) Method of Service.

(1) Service of the notice of civil fine shall be made upon all persons entitled to notice either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person and owner, responsible party or identified agent at his address as shown on the records of the Bernalillo County Assessor or as known to the Department. If no address of any such person so appears or is known to the Department, then a copy of the notice of civil fine shall be so mailed, addressed to such person, at the address of the building involved in the proceedings and posted thereon.

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

(C) Proof of Service. Proof of service of the notice of civil fine shall be certified by a written affidavit executed by the person effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgement of receipt by certified mail shall be affixed to the copy of the notice and order retained by the Department.]

§ 9-8-[28][30] APPEAL PROCEDURE ADMINISTRATIVE HEARING.

The owner may appeal the determination of the need for weed or litter removal [or a civil fine issued pursuant to this article. The request for appeal and the hearing shall comply with the procedures outlined in the Independent Office of Hearings "IHO" Ordinance, ROA 1994, Sections 2-7-8-1 to -9.] [to the City Hearing Officer by filing an appeal within seven calendar days of the date of service of the notice to remove. Such request shall be made in writing and filed in the Office of the City Clerk. The appeal shall identify the property and state the grounds for appeal together with all material facts in support thereof. A filing fee of \$50 shall accompany each appeal application. When a hearing is requested the Hearing Officer shall send written notice by certified mail, return receipt requested, to the owner of the time and place of the hearing. At the hearing the owner shall have the right to present evidence as to the alleged facts upon which the Mayor based the determination of the need for weed or litter removal and any other facts which may aid the Hearing Officer in determining whether this article has been violated. The Hearing Officer shall, following the hearing, issue a written decision. If the decision is that this article has been violated, the decision shall set forth the time within which removal shall be completed by the owner. This decision shall be served in the same manner as the Notice to Remove.]

§ 9-8-[29][31] JUDICIAL REVIEW.

The exclusive remedy for parties dissatisfied with the action of the City Hearing Officer shall be the filing of a petition for a writ of certiorari with the State District Court. The petition for review shall be limited to the record made at the administrative hearing held pursuant to this article.

§ 9-8-3[2][0] REMOVAL UPON DEFAULT OF OWNER.

After said hearing if removal has not been commenced or prosecuted to completion with due diligence as required by the written hearing decision, the [Mayor][Mayor's designee] shall commence removal upon the premises as set forth in § 9-8-26.

§ 9-8-3[3][4] ILLEGAL COMMERCIAL HANDBILLS PREVENTION.

(A) The [Mayor][Mayor's designee] shall create and maintain a 24-hour seven-day per week hotline and website for individuals to report commercial handbills in public places.

(B) The [Mayor][Mayor's designee] shall implement a public outreach program to educate the public about the penalties for illegally posting commercial handbills in public places.

(C) The [Mayor][Mayor's designee] shall initiate a kiosk program to prevent the illegal distribution of commercial handbills. The city kiosk program shall permit kiosks on public rights-of-ways and city owned property where deemed appropriate by the [Mayor][Mayor's designee] in exchange for a reasonable fee.

§ 9-8-3[4][2] SMOKING TOBACCO PRODUCT LITTER.

No person shall dispose of any portion of a smoking tobacco product except in public receptacles or in appropriate private receptacles. Any smoking tobacco product previously lit shall be extinguished prior to disposal.”

SECTION 5. § 9-2-1-4 and § 9-2-1-5 of the Humane and Ethical Animal Rules and Treatment (HEART) Ordinance are hereby amended as follows:

“§ 9-2-1-4 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

*AACC.* Albuquerque Animal Care Center.

*AACC VETERINARIAN.* A Veterinarian employed by the City and assigned to AACC.

*AACC WEBSITE.* An Internet site maintained by AACC.

*ABANDONMENT.* An Owner's intentional act of abdicating reasonable care or control of an Animal in a location where any reasonable person would know the Animal has little chance of finding food, Potable Water or shelter.

**ADEQUATE SHELTER.** A structurally sound, adequately ventilated, weatherproof structure that is comprised of non-toxic materials and interior floors that minimize injury and discomfort to the Animal. The structure must be clean and of a suitable size as to limit overcrowding by properly accommodating the specific Animal. The structure must protect the Animal from extreme conditions. The Animal must be able to lie down fully and rise to its feet, in a natural manner, consistent with the Animal's species. An Adequate Shelter must be within a Secure Fence.

**ADMINISTRATIVE HEARING.** The process by which any grievance under this article is resolved by adjudication.

**ADMINISTRATIVE HEARING OFFICER.** The City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994).

**ADOPTION.** The transfer of ownership of an Animal Impounded at AACC to a Qualified Adopter.

**AGGRESSIVE.** With respect to a Companion Animal in the care of AACC, that the Companion Animal is objectively observable as unnaturally hostile or violent toward humans when unprovoked according to a comprehensive checklist of observable objective characteristics of the Companion Animal compiled by two or more Independent Observers conducting evaluations at different times and with respect to a Companion Animal not in the care of AACC, that the Companion Animal is objectively observable as unnaturally hostile or violent toward humans when unprovoked according to the perspective of any reasonable Person objectively observing the Companion Animal.

**ALBUQUERQUE ANIMAL CARE CENTER or AACC.** Any City of Albuquerque Animal Welfare Department (AWD) premises, locations or buildings designated as suitable by the ~~[Mayor]~~ Mayor's designee for the care, custody and maintenance of Animals seized by the City.

**ALTER.** To render an Animal incapable of reproduction.

**AMERICAN VETERINARY MEDICAL ASSOCIATION.** Not-for-profit association representing more than 72,000 Veterinarians, the goal of which is improving Animal and human health and advancing the Veterinary medical profession.

**ANIMAL.** Any living nonhuman mammal, bird, reptile, or amphibian including~~;~~ ~~but not limited to;~~ bats, Companion Animals, Companion Birds, Domestic Animals, Exotic or Wild Animals, Livestock, pigeons, porcupines, Poultry, prairie dogs, rabbits and skunks. For the purpose of this article, insects and arachnids are not included in the definition of **ANIMALS**.

**ANIMAL BROKERS.** Individual who or group which deals in regulated Animals but does not take physical possession. Must be licensed through the USDA. Sometimes known as "bunchers",

unscrupulous brokers are known to pose as loving adopters, even bringing children with them when responding to “free to good home” ads in local newspapers.

*ANIMAL SERVICE OFFICER or ASO.* Any Person employed by the City, assigned to AACC and charged by the [Mayor][Mayor’s designee] with enforcement of this article in the field and to perform other duties as assigned by the [Mayor][Mayor’s designee].

*ANIMAL-DRAWN VEHICLE.* Any vehicle pulled by an Animal.

*ANIMAL-DRAWN VEHICLE PERMIT or ADVP.* A Permit allowing a Person to attach an Animal to a vehicle for the purpose of moving the vehicle.

*ANIMAL EXHIBIT.* A Companion Animal or Companion Bird show, petting zoo, pony ride, rodeo or other Animal activity operated for the purposes of showing Animals. Prohibited Exotic or Wild Animals are forbidden in Animal Exhibits.

*ANIMAL FIGHTING PARAPHERNALIA.* Equipment that any reasonable Person would ascertain is used for Animal fighting purposes[, including] [~~which includes, but is not limited to~~]:

- (1) Instruments designed to be attached to the leg of a bird, such as a knife, gaff or other sharp instrument;
- (2) Items to train and condition dogs to fight[, including[, but not limited to,] hides or other material used as hanging devices to strengthen or condition dogs, wooden sticks or handles used to pry open dog's jaws, performance enhancing drugs or substances, or food or water additives; and
- (3) The presence of any dog that appears to be a fighting dog alone or together with Animals suspected of being used as Bait Animals, including[, but not limited to,] rabbits, cats and other dogs.

*ANIMAL HANDLER.* Any Person employed by the City, assigned to AACC and charged by the [Mayor][Mayor’s designee] to humanely receive, inspect, feed, clean and care for Animals Impounded at AACC, to assist the public and Rescue Groups in viewing and selecting Companion Animals and to perform other duties as assigned by the [Mayor][Mayor’s designee].

*ANIMAL HEALTH TECHNICIAN or VET TECH.* Any Person employed by the City, assigned to AACC and charged by the [Mayor][Mayor’s designee] to assist the AACC Veterinarian.

*ANIMAL POSSESSION LIMITS.* The number of Animals allowable at one Household without generating the need for a Multiple Animal Site Permit.

*ANIMAL SERVICE PROVIDER.* Any Establishment that takes temporary possession of an Animal from the Owner, not on the Owner’s property, to perform a service for the Animal or

Owner, including~~[, but not limited to,]~~ Grooming Parlors, Animal Day Care establishments and Boarding Kennels, but excluding Pet Stores. *ANIMAL SERVICE PROVIDER* does not include a licensed Veterinarian.

*ANIMAL SHELTER*. A pound, lot, premises or building maintained by the City or a private organization, for the care and custody of animals.

*ANTI-RABIES VACCINATION*. Inoculation with an anti-rabies vaccine recognized and approved by the State of New Mexico and given in an amount sufficient to provide immunity from rabies for a minimum of one year.

*AT LARGE*. An Animal, on or off the Owner's premises, that is not contained by a Secure Fence, a Secure Facility, a Secure Enclosure, secured in the back of a pickup truck, inside a vehicle with proper ventilation or restrained on a leash no longer than eight feet held by a responsible Person capable of controlling the Animal. Verbal commands do not constitute control of an Animal. An At Large Animal is in violation of the leash law.

*BAIT ANIMAL*. An Animal used to train or condition other Animals to fight and includes~~[, but is not limited to,]~~ living dogs, cats and rabbits exposed to attack by other dogs used or trained to be used in dog fighting or to make the attacking Animal more confident and Aggressive.

*BASIC GROOMING*. Examination, attention and acts reasonably necessary to maintain the eyes, ears, beaks, hooves, feet, coat and skin of an Animal in healthy condition. Basic Grooming also obligates an Owner to provide any and all materials an Animal requires for self-grooming. *BASIC GROOMING* does not include acts to maintain appearance only.

*BASIC MEDICAL CARE*. Reasonable medical care required by the species, including~~[, but not limited to,]~~ periodic examinations by a Veterinarian, prompt Veterinary care when required, age and species appropriate Vaccinations, Basic Grooming and internal and external Parasite Control where appropriate.

*BITE*. A puncture or tear of the skin inflicted by the teeth of a Companion Animal.

*BITTERING AGENT*. Nontoxic substance added to palatable toxic substances, including~~[, but not limited to,]~~ antifreeze, to make those substances unpalatable to Animals and humans. It is important to note that this additive does not change the toxic nature of antifreeze.

*BOARDING KENNEL*. An Establishment where Animals are housed overnight for the benefit of the Owner but does not include Guard Dog Sites, state inspected Veterinary hospitals, Pet Stores, or Zoos.

*BONA FIDE ANIMAL SHOW*. An exhibition approved by the [Mayor][Mayor's designee] of

Companion Animals, Companion Birds or Horses in competition for prizes or awards that does not include sales or fighting.

**CAGE.** A structure for confining birds or animals, enclosed on at least one side by a grating of wires or bars that lets in air and light.

**CHAIN.** A chain, tether or other device used to restrain an animal when the Animal is not accompanied by a Person.

**CHAINING or TETHERING.** Confining an Animal when unattended by an individual with a tether, rope, chain, or other device to a doghouse, stake, tree, structure or other stationary object.

**CHEMICAL RESTRAINT DRUG.** Any drug administered to a Companion Animal prior to Euthanasia to reduce aggressiveness, excessive mobility or stress to the Companion Animal including[, but not limited to,] ketamine, xylazine, and acepromazine.

**CLERICAL WORKER.** Any Person employed by the City, assigned to AACC and charged by the [Mayor][Mayor's designee] to provide Adoption services to the public, answer telephones, enter data or perform other duties as assigned by the [Mayor][Mayor's designee].

**COCKFIGHT or COCKFIGHTING.** A fight arranged by a Person involving one or more birds and that has the purpose or probable result of one bird inflicting injury on or killing another bird.

**COMMERCIAL PROPERTY.** Any property not zoned for dwelling units under the Integrated Development Ordinance. A vehicle or other temporary mobile facility used for the purpose of doing business concerning or involving Animals shall also be deemed Commercial Property for the purposes of this article.

**COMPANION ANIMAL.** A dog or cat that is not a Hybrid.

**COMPANION BIRD.** A bird commonly kept as a pet by humans and confined on the property of the Owner, including[, but not limited to,] parakeets, canaries, lovebirds, finches, parrots, macaws, cockatoos, cockatiels, toucans and lorries, but excluding:

- (1) All of the family Anatidae (waterfowl);
- (2) All of the family Tetraonidae (grouse and ptarmigans);
- (3) All of the family Phasianidae (quail, partridges and pheasants);
- (4) All of the family Meleagridae (wild turkeys) except for the domestic strains of turkeys;
- (5) All of the family Perdidae (francolins);
- (6) All of the family Gruidae (cranes);
- (7) All of the family Rallidae (rails, coots and gallinules);
- (8) All of the family Charadriidae (plovers, turnstones and surfbirds);



- (9) All of the family Scolopacidae (shorebirds, snipe, sandpipers and curlews);
- (10) All of the family Recurvirostridae (avocets and stilts);
- (11) All of the family Phalaropodidae (phalaropes);
- (12) All of the family Columbidae (wild pigeons and doves) except for the domestic strains of pigeons; and
- (13) Ducks, geese, chickens and other poultry.

**CONFISCATE.** A City official has Seized an Animal with the intent and purpose to divest the Owner of all interest in the Animal and following the procedures set forth in this article, to convey all rights, ownership and interests in the Animal to the City of Albuquerque for the benefit of the Animal and the public.

**CONSTRUCTIVE POSSESSION.** The exercise of dominion and control over the location and treatment of property without taking physical possession of the property.

**CRATE.** A device or structure designed for the temporary confinement of an Animal.

**CRUELTY.** A Person intentionally killing an Animal without Lawful Justification or mistreating, injuring, maiming, disfiguring, tormenting, torturing, beating, mutilating, burning, scalding, poisoning, attempting to poison or otherwise unnecessarily causing an Animal to suffer physical or emotional harm. Any of the following is a separate act of Cruelty: failing to provide necessary sustenance to an Animal under that Person's Custody or control, failing to provide Adequate Shelter, failing to provide Potable Water, failing to provide palatable, nutritious food of adequate quantity, taunting an Animal, dyeing, or artificially coloring an Animal under the age of 12 weeks, transporting an Animal in an open vehicle without proper restraints, leaving an Animal in a vehicle when the temperature is such that it could cause pain or suffering to the Animal. Abandonment or Neglect of an Animal is Cruelty. Inaction of the Owner toward an Animal in need of Basic or Emergency Medical Care is Cruelty. Surgery by a Veterinarian is not Cruelty but ear cropping, de-barking, tail docking or Alteration by an individual who is not a Veterinarian is Cruelty. Euthanasia by a Veterinarian or a Euthanasia Qualified Employee of AACC shall not be deemed Cruelty provided it is carried out by methods specified in this article or by other generally accepted methods. The application of pesticides or rodenticides by a properly licensed professional is not Cruelty.

**CUSTODY.** The possession, control over and responsibility for an Animal by a Person who may or may not be the Owner.

**DEA.** Drug Enforcement Agency.

**DIRECTOR.** The Director of the Environmental Health Department of the City.

**DISPLAY.** Any exhibition, act, circus, ride, trade show, carnival, parade, race, photographic opportunity, performance or similar undertaking in which Animals are required to perform or participate for the intended amusement or benefit of an audience.

**DOGGIE DAY CARE.** An Establishment that takes temporary possession of an Animal to provide safety, comfort and socialization for the Animal.

**DOMESTIC ABUSE BOARDING.** A program at AACC where Animals owned by a victim of a Domestic Abuse Situation may obtain temporary housing at AACC.

**DOMESTIC ABUSE SITUATION.** Any situation defined in the Crimes Against Household Members Act, §§ 30-3-10 NMSA 1978, et seq.

**DOMESTIC ANIMAL.** Any Animal whose psychology has been determined or manipulated through selective breeding and which does not occur naturally in the wild and includes[, but is not limited to,] ferrets, gerbils, guinea pigs, hamsters, horses, mice, rabbits, donkeys, rats and kangaroo rats. All Companion Animals are Domestic Animals but all Domestic Animals are not Companion Animals.

**EMERGENCY MEDICAL CARE.** The care required in response to a traumatic injury or rapidly evolving health crisis concerning an Animal.

**ENVIRONMENTAL ENRICHMENT.** Safe products appropriate for the species that will stimulate mental, physical and grooming activities for Animals.

**ESTABLISHMENT.** A place of business in a zone other than a Residential Zone together with its grounds and equipment.

**ESTRUS.** The regularly recurring state rendering a female Animal capable of accepting the male Animal for breeding and conception.

**EUTHANASIA.** The killing of an Animal in a manner commonly recognized as humane and acceptable by local Veterinarians or HSUS. Intra- cardiac shots are absolutely prohibited as a form of Euthanasia at AACC.

**EUTHANASIA AUTHORIZED.** Employees of AACC who have met the necessary training requirements to perform Euthanasia and have been authorized by the Person In Charge to humanely destroy the life of an Animal.

**EUTHANASIA QUALIFIED EMPLOYEE.** An AACC employee who is trained and certified by HSUS to be qualified to perform Euthanasia and approved by the [Mayor][Mayor's designee] to perform Euthanasia at City facilities.

*EUTHANASIA ROOM.* A separate room at AACC facilities used to perform Euthanasia and for no other purpose and which meets all the requirements set forth in this article.

*EXOTIC or WILD ANIMALS.* Those species of Animals that are exotic to humans. *EXOTIC ANIMALS* include[~~;~~ but are not limited to~~;~~] any or all of the following orders and families, whether bred in the wild or in captivity, and any or all hybrids. The Animals listed in parentheses are intended to act as examples and are not to be construed as an exhaustive list or limit the generality of each group of Animals, unless otherwise specified:

(1) Class Mammalia

(a) Order Artiodactyla (hippopotamuses, giraffes, camels, deer, not cattle or swine or sheep or goats)

(b) Order Carnivora

1. Family Felidae (lions, tigers, cougars, leopards, ocelots, servals, not domestic cats)
2. Family Canidae (wolves, coyotes, foxes, jackals, not domestic dogs)
3. Family Ursidae (all bears)
4. Family Mustelidae (weasels, skunks, martens, minks, not ferrets)
5. Family Procyonidae (raccoons, coatis)
6. Family Hyaenidae (hyenas)
7. Family Viverridae (civets, genets, mongooses)

(c) Order Edentatia (anteaters, armadillos, sloths)

(d) Order Marsupialia (opossums, kangaroos, wallabies, not sugar gliders)

(e) Order Perissodactyla (rhinoceroses, tapirs, not horses or donkeys or mules)

(f) Order Primates (lemurs, monkeys, chimpanzees, gorillas)

(g) Order Proboscidae (elephants)

(h) Order Rodentia (squirrels, beavers, porcupines, not guinea pigs, or rats, or mice, or gerbils, or hamsters)

(2) Class Reptilia

(a) Order Squamata

1. Family Varanidae (only water monitors and crocodile monitors)
2. Family Iguanidae (only green iguanas and rock iguanas)

3. Family Boidae (all species whose adult length has the potential to exceed eight feet in length)

4. Family Colubridae (only boomslangs and African twig snakes)

5. Family Elapidae (coral snakes, cobras, mambas) - All species
  6. Family Nactricidae (only keelback snakes)
  7. Family Viperidae (copperheads, cottonmouths, rattlesnakes) - All species
- (b) Order Crocodilia (crocodiles, alligators, caimans, gavials) - All species
- (c) Order Cetacea (whales, dolphins, porpoises)
- (d) Order Pinnipedia (seals, sea lions, walruses)

**EXOTIC OR WILD ANIMAL COLLECTION PERMIT or EWACP.** The Permit allowing a Person to own a Permissible Exotic or Wild Animal within the Albuquerque City Limits.

**EXTREME CRUELTY.** A Person is guilty of Extreme Cruelty to Animals if a Person intentionally or maliciously tortures, mutilates, injures or kills an Animal, or if a Person poisons an Animal. Extreme Animal Cruelty is governed by §§ 30-18-1 NMSA 1978 et seq. and is a Fourth Degree Felony, punishable by a fine up to \$5,000 and 18 months imprisonment.

**FACILITY-WIDE CONTAGION.** The presence of any disease at AACC which could be passed from one Animal to another or to humans to a degree not ordinarily found in nature and exacerbated by the close proximity of large numbers of Animals at AACC.

**FIGHTING BIRD.** A bird that is possessed, reared or trained for use in, or that is actually used in, a Cockfight or any other fight or contest involving Animals.

**FIGHTING DOG.** A dog that is trained for use in, or that is actually used in a fight with other dogs or any other Animal.

**FINDER.** Any Person who discovers and temporarily takes possession of a Companion Animal that has been separated from its Owner.

**FOSTER.** To take temporary Custody of any Animal with the approval of or at the request of AACC to administer veterinary care, groom, train, provide special feeding, care for or otherwise provide for the Animal.

**FOSTER CARE PROVIDER.** Any Person who fosters an Animal from or through AACC to lend aid and comfort and to otherwise assist in making the Animal Adoptable or, in the case of Domestic Abuse Boarding, to provide a safe, homelike environment to minimize the negative effects on the Animal of being separated from its family.

**FOUND COMPANION ANIMAL.** A Stray Animal that is temporarily possessed by a Person who has registered with AACC to hold the Animal for Reclaim by the Owner or subsequent disposition as provided in this article.

**GAFF.** An artificial steel spur designed for attachment to the leg of a Fighting Bird.

*GROOMING PARLOR.* An Establishment that is maintained in whole or in part for the purposes of performing cosmetological services for Animals.

*GUARD DOG.* A dog that is used to protect a Guard Dog Site.

*GUARD DOG SITE.* An Establishment that utilizes a Guard Dog.

*GUARD DOG SITE PERMIT or GDSP.* The Permit required for a Guard Dog Site.

*HARNESS.* With respect to a dog, a properly fitting apparatus that is not abrasive and that restrains the dog by the body and shoulders without the involvement of the neck. With respect to a cat, a properly fitting apparatus that is not abrasive featuring adjustable collar buckles around the neck that are joined to an adjustable girth.

*HEALTHY.* That an Animal is free from disease and not suffering from any objectively observable illness.

*HOUSEHOLD.* A human social or family unit comprised of Persons living, residing and domiciled in the same residence.

*HSUS.* The Humane Society of the United States or its successor entities.

*HYBRID.* An Animal created by breeding Animals of different species. Dogs, wolves and coyotes are different species for purposes of this definition.

*IDENTIFIED.* A Companion Animal that has an affixed License Tag, Microchip, Tattoo or other indication of the Owner sufficient for AACC or any other Person to contact the Owner or is known to an ASO or other AACC employee.

*ILLNESS.* A malady, injury, impairment, or physical/mental condition that requires veterinary care.

*IMPOUND.* Receipt of an Animal by AACC for processing as provided in this article.

*INDEPENDENT OBSERVER.* A Person who evaluates a dog for Aggressive behavior without knowing about the conclusions or observations of another Person who has also evaluated the dog. *INDEPENDENT OBSERVER* shall also mean a Person who evaluates a dog with no predisposition or prejudice concerning the dog and who is free from influence by any third Person desiring any certain outcome of the assessment.

*INJURED.* The condition of an Animal's being harmed, disabled or impaired in a physical sense which is determined by the reasonable objective observation of wounds, injured limbs, broken bones, or disfiguring lacerations.

*INTACT.* A dog or a cat over six months old that has not been Altered.

*INTACT COMPANION ANIMAL PERMIT or ICAP.* The annual Permit issued to the Owner of a

Companion Animal that has not been Altered.

*INTACT COMPANION ANIMAL SITE.* Any residence, building or other structure in a Residential Zone that is used in whole or in part to house or keep an Intact Animal.

*INTAKE AREA.* The area set aside at each AACC facility where Animals are dropped off by the public, Surrendered by the Owner, or brought in by Animal Service Officers or other public safety personnel.

*INTAKE DAY.* The first day of arrival of an Animal at AACC during which time the Animal goes through the Intake Process.

*INTAKE PROCESS.* The procedure for receiving, documenting, photographing, physically examining, vaccinating, de-worming and applying parasite prevention to Animals that arrive at AACC, and includes all activities between the time of arrival and the time the Animal is put in the Enclosure where it will be housed while at AACC.

*INTENT TO ADOPT.* A document filed with AACC indicating that a Qualified Adopter wants to Adopt a Companion Animal not currently available for Adoption.

*LAWFUL JUSTIFICATION.* A strictly construed defense to a charge of Cruelty based on an immediate need to defend a threatened Person or Animal from an imminent attack by an Animal apparently capable of causing death or serious bodily injury to the threatened individual or Animal.

*LEASH LAW.* Animals, other than wild animals not owned by any human, must be restricted at all times by either a Secure Fence, a Secure Facility, a Secure Enclosure, secured in the back of a pickup truck, inside a vehicle with proper ventilation, or be on a leash no longer than 8 feet long accompanied by a person able to control the Animal.

*LETHAL DRUG.* A chemical that causes the humane death of an Animal and that is approved by the AACC Veterinarian and the [Mayor][Mayor's designee].

*LICENSE.* An Albuquerque Companion Animal License.

*LICENSE TAG.* The tag supplied by AACC or its agents that contains the number of an Albuquerque Companion Animal License.

*LITTER.* One or more sibling offspring Companion Animal under six months old.

*LITTER PERMIT.* Permit required when an Animal becomes pregnant.

*LITTER SURRENDER AGREEMENT.* An agreement between the [Mayor][Mayor's designee] or his or her designated representative(s) and the Owner of a Litter.

*LIVE HUMANE TRAP.* Any device designed to catch and restrict an Animal without causing any harm to the Animal.

**LIVESTOCK.** Livestock as defined in the State Livestock Code and shall include, but not be limited to, bison, buffalo, cattle, horses, donkeys, mules, chickens, ducks, poultry, llamas, ostriches, emus, rheas, camelids (camels), farmed cervidae, swine, sheep or goats.

**LOST AND FOUND PROGRAM.** An AACC program that focuses on reuniting lost Animals with their Owners.

**LOW INCOME PERSON.**

(1) A Person who possesses:

- (a) An EBT card issued by the State of New Mexico for Food Stamps;
- (b) Either the annual letter of statement of benefits or monthly benefit card for Supplemental Security Income;
- (c) An EBT card issued by the State of New Mexico for the Temporary Assistance for Needy Families program; or
- (d) A Medicaid health benefit card; or

(2) A Person:

- (a) Whose income is 50% or less of the median gross income for the City adjusted for family size, as determined by the U.S. Department of Housing and Urban Development or by figures obtainable from the Family and Community Services Department of the City of Albuquerque or its successor agencies; and
- (b) Who signs and submits an affidavit to AACC swearing that his or her income is 50% or less of the median gross income for the City, adjusted for family size.

[~~Mayor~~][Mayor's designee]. The Mayor of the City of Albuquerque or his or her designee.

**MEDICAL WAIVER CERTIFICATE.** A document written by a Veterinarian stating why a Companion Animal should not be altered. Used in cases when Alteration would pose a substantial threat to the health of the Animal.

**MICROCHIP.** A passive transponder which can be implanted in an Animal by injection and which is a component of a radio frequency identification (RFID) system, but excluding any system that is not compatible with the scanner used by AACC.

**MODERATE INCOME PERSON.** Any Person:

- (1) Whose income is 80% or less of the median gross income for the City adjusted for family size, as determined by the U.S. Department of Housing and Urban Development or by figures obtainable from the Family and Community Services Department of the City or its successor agencies; and

(2) Who signs and submits an affidavit to AACC swearing that his or her income is 80% or less of the median gross income for the City, adjusted for family size.

*MULTIPLE COMPANION ANIMAL SITE or MCAS.* Property in a Residential Zone upon which, by virtue of a Permit, the Owner is allowed to exceed the authorized Companion Animal number limits authorized by this article.

*MULTIPLE COMPANION ANIMAL SITE PERMIT or MCASP.* The Permit required to operate a Multiple Companion Animal Site.

*NEGLECT.* The failure of an Owner to provide care for an Animal in the Owner's Custody which failure causes an Animal to suffer physical or emotional harm.

*NIGHTTIME.* The period starting at 10:01 p.m. and ending at 7:00 a.m. the following day.

*OWNER.* A Person who possesses an Animal and claims a legally valid right of possession of an Animal superior to the rest of the world. Under this article, any Person acting as the agent of the Owner and any Person over the age of 18 in a Household and left in charge of an Animal may be deemed the Owner.

*OWNER SURRENDER.* The relinquishment by the Owner of all rights in and to an Animal to AACC.

*OWNER SURRENDER ACKNOWLEDGEMENT FORM.* The AACC form that an Owner executes in order to relinquish an Animal to AACC.

*PARASITE CONTROL.* Eradication of pests such as insects, ticks, fleas, worms, and other organisms living or seeking to live in or on an Animal. Reasonable Parasite Control measures must be employed to eradicate parasites from all areas an Animal has access to and from the body of the Animal.

*PERMANENT IDENTIFICATION.* Companion dogs and cats required to have a permanent, easily detectable, identification number applied by a Veterinarian by means of a Microchip or Tattoo.

*PERMISSIBLE EXOTIC OR WILD ANIMALS.* Exotic or Wild Animals, the Ownership of which does not violate state or federal law.

*PERMIT.* A document evidencing approval by the [Mayor][Mayor's designee] to conduct a certain activity or possess a certain Animal.

*PERMIT HOLDER.* A qualified person to whom a valid permit has been provided.

*PERMITTED PREMISES.* The Establishment, residence, real property or other site for which a valid Permit has been issued.



*PERSON.* An individual, firm, partnership, corporation, company, society, association or legal entity, and every officer, agent or employee thereof.

*PERSON IN CHARGE.* The individual present or individual in apparent supervision or control of a premise.

*PET STORE.* An Establishment that, in whole or in part, offers Animals, other than Companion Animals, for sale or resale, or sells Animals to consumers or wholesalers.

*PET STORE PERMIT or PSP.* A Pet Store Permit for Pet Stores that do not sell Companion Animals.

*POLICE OFFICER.* Any sworn member of the Albuquerque Police Department or any sworn officer of any other law enforcement agency authorized and empowered to enforce or execute laws in the City.

*POSSESSION.* Custody of an Animal.

*POTABLE WATER.* Water that is safe for drinking.

*POULTRY.* Any bird that is kept as a pet or any bird that is commonly used by humans for eggs or meat. Companion Birds are not considered Poultry in this article.

*PROHIBITED EXOTIC or WILD ANIMALS.* Any Exotic or Wild Animal that is unlawful to own, possess, keep, harbor, bring into the city, have in one's possession or allow to breed under federal or state law.

*PROOF OF OWNERSHIP.* Any documentation or evidence which proved to the satisfaction of the [Mayor][Mayor's designee] that a Person is the Owner of an Animal, including[, but not limited to,] a Microchip identification, Veterinarian invoice, official registration, or photographs of the Animal.

*PROTECTIVE CUSTODY.* The temporary control over and care of an Animal at AACC.

*PROVOKED.* The response of an Animal that a reasonable Person believes the Animal has taken to defend itself, its Owner or family member, or another Person within its immediate vicinity from assault, actual or perceived, or to defend real property belonging to its Owner or family member.

*QUALIFIED ADOPTER.* A Person who is 18 years of age or older, who has never been convicted of any form of Cruelty under any law and in addition has not been convicted two or more times for any violation of this article or its predecessor ordinances, has never had any Animal-related Permit Revoked or Suspended, has never failed to Reclaim an Animal from AACC, has not Surrendered an Animal within one year of the time of Adoption and has never been

convicted of child or domestic abuse.

**QUARANTINE.** The segregation of an Animal for any time as required under state law or this article in order to control the spread of rabies or contagious illness.

**RABIES VACCINATION.** Inoculation with an anti- rabies vaccine recognized and approved by the State of New Mexico and given in an amount sufficient to provide immunity from rabies for a minimum of one year.

**RECLAIM.** An Owner's recovery of an Animal that has been Impounded at AACC.

**REHABILITATORS.** Individuals who provide professional care to sick, injured, and orphaned wild animals so they can ultimately be returned to their natural habitats. Such rehabilitation is not an attempt to turn wild animals into pets. Patients are held in captivity only until they are able to live independently in the wild.

**RESCUE GROUP or RESCUE INDIVIDUAL.** Those groups or individuals approved by the [ Mayor][Mayor's designee] for the purpose of Adopting Animals from AACC at a reduced rate to provide needed medical, grooming, behavioral or rehabilitative services in order to facilitate successful Adoptions of Animals.

**RESERVE ANIMAL SERVICE OFFICER or RESERVE ASO.** Any Person who volunteers without compensation to assist ASOs in the field.

**RESIDENTIAL ZONE.** "Zone, Residential" as defined in the city's Integrated Development Ordinance.

**RETURN BY ADOPTER.** That an Animal has been returned to AACC within thirty days of Adoption.

**SAFE HAVEN.** The period of time when an Animal is exempt from Euthanasia.

**SANCTUARY.** Areas protected through the management of human activities to provide and maintain habitat, other wildlife, and the ecosystems that support them. Inclusions: National Wildlife Areas, Migratory Bird Sanctuaries, Conservation Areas and Marine Protected Areas.

**SECURE ENCLOSURE.** Cage or box, that may be portable, from which an Animal is not able to escape or be invaded.

**SECURE FENCE.** A visible protective or confining barrier that prevents any Animal, including Guard Dogs, from escaping the property on which the Animal is being restricted. The Secure Fence shall also reasonably protect the Animal within the fence from other Animals or people coming into contact with the restrained Animal. This includes a dog run type structure.

**SECURE FACILITY.** A house or building in which an Animal is being restricted that will prevent

the Animal, including a Guard Dog, from being able to escape.

**SEIZE.** To take Custody of an Animal with or without notice to the Owner or the consent of the Owner. Exigent circumstances must exist if an Animal is taken into Custody without notice to the Owner or the consent of the Owner.

**SENIORS.** Persons 65 years of age or older.

**SERVICE ANIMAL.** A dog trained or being trained by a recognized school for training dogs to assist Persons with disabilities; an Animal recognized as a Service Animal pursuant to the American with Disabilities Act of 1990; or any other Animal approved by the Governor's Committee on Disability as acceptable in public places and trained to provide some special assistance to a Person with a disability.

**SEVERE MEDICAL CONDITION.** A condition that results in an Animal requiring, permanently or for an extended period, a high level of constant care to maintain comfort, sustain life, or attend to a bodily function that the Animal cannot manage itself.

**SLASHER.** A steel weapon resembling a curved knife blade designed for attachment to the foot of a Fighting Bird.

**SPRING LOADED TRAP.** Any device used to capture an Animal by the leg or any extremity by closing on the Animal by the action of a spring or any other mechanism designed to hold, immobilize or otherwise automatically detain an Animal for any purpose. The City does not consider this to be a humane trap.

**STAFFING LEVELS FOR ANIMAL CARETAKING.** The minimum number of kennel staff that must be available at AACC according to the Animal population at AACC as set forth in the October 2000 HSUS Report to the Albuquerque Animal Services Division under the heading titled "Staffing Levels for Animal Caretaking" at page 96 of said report and the minimum number of ASOs that must be available according to the HSUS Report at page 159.

**STRAY.** An Animal that is At Large.

**SURRENDER.** The relinquishment of Ownership of an Animal to AACC by the Owner of the Animal.

**TATTOO.** An indelible mark placed on an Animal to serve as Permanent Identification.

**TIME.** Days spent at AACC.

**TREATABLE ILLNESS.** An illness, injury, impairment, or physical/mental condition that can be reasonably treated using proper medication.

**TROLLEY.** A cable strung between two fixed and stable points, to which a dog on a short lead is

attached, allowing for freedom of movement.

*TROLLEY PERMIT.* A permit issued by the City authorizing the use of a Trolley. In order to obtain a Trolley Permit, the applicant must prove that all other means of restricting the Animal to the personal property have been exhausted.

*UNIDENTIFIED.* An animal that has no identification sufficient to allow AACC to determine the Owner's identity.

*USDA.* The United States Department of Agriculture or its successor.

*VACCINATION or VACCINATE.* Administer a vaccine to an Animal, including[~~;~~ but not limited to~~;~~] rabies, distemper, parvo, para influenza, corona virus or bordatella and other vaccines deemed necessary from time to time by the [~~Mayor~~][Mayor's designee].

*VERMIN.* Wild rodents and various insects including flies, mosquitoes, ants and wasps.

*VETERINARIAN.* A Doctor of Veterinary Medicine licensed to practice in the State of New Mexico.

*VETERINARY EMERGENCY CLINIC or VEC.* Any entity which contracts with the city for Veterinarian services.

*VOLUNTEER.* Any Person who performs any Animal services function or assists any AACC employee without compensation.

*VOLUNTEER COORDINATOR.* A person employed by the city, of at least class M-14, assigned to AACC for the purpose of recruiting and maintaining a cadre of highly committed volunteers.

*WOLF HYBRID.* The offspring of a domesticated dog that has been bred with a wolf.

*WORKING DAYS.* The days AACC is open to the public.

*ZOO.* The Rio Grande Zoological Park and others zoos accredited by the American Zoological Association.

#### § 9-2-1-5 ADMINISTRATION.

*Rules and Regulations.* Reasonable rules and regulations may be prescribed by the [~~Mayor~~][Mayor's designee] to carry out the intent and purpose of this article, pursuant to standards created by this article.”

SECTION 6. § 9-2-2-1(C)(1) is hereby amended as follows:

“ (C) *Required Alteration of Companion Animals.* All dogs and cats over the age of six months shall be Altered by a Veterinarian except as provided herein.

(1) Owners of Companion Animals may seek an exemption from this regulation if Alteration

would be dangerous for the Companion Animal due to advanced age or health issues. The [Mayor][Mayor's designee] may grant this exemption if the Owner of the Animal can provide proof in the form of a letter from a Veterinarian stating such reasons.”

SECTION 7. § 9-2-2-6(B) is hereby amended as follows:

“ (B) *Cars, Vans and RVs.* Animals riding inside vehicles that are not in Crates or other enclosures must not be allowed access to a window opened wide enough for the Animal to jump, fly or fall out. Animals left unattended in cars, vans or RVs must have adequate ventilation to prevent the temperature in the vehicle from rising high enough such that any reasonable Person would know that the Animal would suffer from heat exposure. During the warmer months, no amount of ventilation will keep the car from getting too hot. If the [Mayor][Mayor's designee] determines that an Animal in a vehicle is in immediate danger, the [Mayor][Mayor's designee] may enter the vehicle by whatever means necessary, without being liable to the owner of the vehicle, and seize the Animal.”

SECTION 8. § 9-2-3-2 through § 9-2-3-6 are hereby amended as follows:

“§ 9-2-3-2 PERMITS: GENERAL PROVISIONS.

(A) A Permit is not a property right.

(B) The [Mayor][Mayor's designee] can refuse to issue, revoke, suspend or modify Permits and impose conditions or limits upon the issuance of Permits, including the declaration of moratoria regarding issuance of Permits.

(C) Permits expire one year from the date of issue, unless otherwise specifically provided in this article.

(D) The [Mayor][Mayor's designee] shall charge a reasonable inspection fee for compliance inspections.

(E) Permits are not transferable or refundable.

(F) The Fees for Permits are as stated in §9-2-3-16 of this article.

§ 9-2-3-3 PERMIT HOLDERS: GENERAL DUTIES AND REQUIREMENTS.

Permit Holders must comply with all the requirements of this article, state law, and federal law. Additionally, Permit Holders must comply with the following duties and requirements. Any violation by a Permit Holder may result in revocation, suspension or modification of the Permit.

(A) Permit Holders shall meet the standards of a Qualified Adopter.

(B) Permit Holders shall comply with all special requirements pertaining to the type of Permit held.

(C) *Inspections.*

(1) A permitted Establishment, other than a residence, shall allow entry and inspection of the Permit Holder's premises by the [Mayor][Mayor's designee]. Upon presentation of proper identification, the [Mayor][Mayor's designee] shall be allowed to enter any Permitted Establishment for the purpose of making an inspection of the premises for compliance with this article or an inspection to ascertain the existence or nonexistence of conditions dangerous to health or safety or otherwise relevant to the public interest in conformance with the provisions of the Public Health Act, NMSA 1978, 24-1-1 et seq. (2006).

(2) The holder of a Permit pertaining to a permitted activity in a residence may consent to an inspection but also has the right to deny entry for an inspection or schedule the inspection at a convenient time and attempt to prove compliance to the satisfaction of the [Mayor][Mayor's designee] by means other than inspection. If the [Mayor][Mayor's designee] finds that the Permit Holder is not in compliance, the Permit Holder may request an Administrative Hearing to prove compliance to the satisfaction of the Administrative Hearing Officer. Nothing herein limits the authority of the city or other law enforcement authority to seek or obtain a search warrant if there is probably cause of crime on private property or an inspectorial order for the purpose of ascertaining the existence or nonexistence of conditions dangerous to health or safety or otherwise relevant to the public interest.

(3) The Person in Charge of the Permitted Premises shall be allowed to accompany the [Mayor][Mayor's designee] on his inspection.

(4) Upon completion of an inspection of a Permitted Premises, the [Mayor][Mayor's designee] shall prepare a written inspection report stating whether the Permitted Premises is in compliance with or in violation of the requirements of this article.

(5) If the [Mayor][Mayor's designee] determines the Permitted Premises is not in compliance with the provisions of this article, the report shall specify the nature of the noncompliance.

(6) The [Mayor][Mayor's designee] and the Person in Charge of the Permitted Premises shall sign the inspection report.

(7) A copy of the inspection report shall be furnished to the Person in Charge at the time of the inspection.

(8) All inspection reports for business Permitted Premises shall be posted on the AACC

Website.

(D) *Records.* The [Mayor][Mayor's designee] shall be allowed to examine all records pertinent to the origin, care and disposition of Animals owned by the Permit Holder. A current record shall be kept which describes all Animals owned, purchased or received by the Permit Holder and the disposition of each Animal. Permit Holders shall promptly produce any and all documents pertaining to medical care and ownership records for inspection upon request of the [Mayor][Mayor's designee]. Permit Holders who sell, give away, loan, transfer or in any way alienate possession or ownership of an Animal shall keep records containing the name and address of each recipient, the date of disposition and the Permanent Identification of each Companion Animal. All required documents shall be kept for three years after the death or other disposition of any Animal owned by the Permit Holder.

(E) Permit Holders shall comply with all city ordinances including~~;~~ but not limited to~~;~~ the Integrated Development Ordinance and Noise Ordinance provisions that pertain to Animals.

(F) Any Permitted Premises open to the public shall post a sign conspicuously observable by the public which states that all Companion Animals in the city must be spayed or neutered unless they possess an Intact Animal Permit and they must be Microchipped or otherwise Permanently Identified. Such signs shall be at least 8 ½ inches by 11 inches in size and contain lettering at least 1 inch in height.

(G) Non-residential Permitted Premises shall post their Permit in a conspicuous place.

(H) The Permit Holder shall notify the [Mayor][Mayor's designee] of any changes which may affect the status of the Permit and shall keep the [Mayor][Mayor's designee] informed of any changes in the Permit Holder's name, address, home and business telephone numbers, location of the Permitted Premises, emergency contacts and activities covered by the Permit.

(I) Both the Person in Charge of a Permitted Premises and the Owner of the Permitted Premises shall be responsible for complying with this article.

#### § 9-2-3-4 PERMIT RENEWALS.

(A) An application for the renewal of a Permit shall be filed with AACC not less than 30 days before the date the Permit expires.

(B) The application, inspection procedures and fees for Permit renewals shall be the same as those for new applications.

(C) Failure to renew a Permit as specified shall result in the expiration of the Permit. In addition to the renewal fee the [Mayor][Mayor's designee] may charge a late fee.

§ 9-2-3-5 PERMIT APPLICATIONS.

(A) Applicants for any Permit shall meet the standards of a Qualified Adopter.

(B) *Application Process.*

(1) The application form shall require the applicant to affirm under penalty of perjury that the applicant meets the standards of a Qualified Adopter and to provide information that is sufficient to assure the [Mayor][Mayor's designee] that the applicant has the knowledge and facilities adequate to care for the Animals covered by the Permit in a manner that protects both the Animals and the public.

(2) The application form shall require the applicant to supply the names, addresses and phone numbers of two adults not living at the same address as the applicant, or each other, for the purpose of being emergency contacts. These people must agree to take responsibility for the Animals in the event the Permit Holder becomes unable to take care of the Animals covered by their Permit.

(3) No Person shall be issued a Permit if that Person is jointly interested in the Permit or otherwise in privity with any Person who does not meet the standards of a Qualified Adopter.

(4) Within 30 days of the receipt of a Permit application [Mayor][Mayor's designee] shall review the application and inspect the premises. The [Mayor][Mayor's designee] shall approve, conditionally approve or deny the Permit application and notify the applicant in writing of the decision.

(5) The [Mayor][Mayor's designee] may approve an application only after the following determinations are made:

(a) the standards established by this article and other applicable laws and regulations have been met;

(b) the issuance of a Permit will not result in activity which presents a danger to the public health, safety or welfare; and

(c) the issuance of a Permit does not create a nuisance for any Person.

(6) If any affected party wishes to appeal the [Mayor][Mayor's designee]'s decision regarding a Permit application, the party may request an Administrative Hearing before the Administrative Hearing Officer.

§ 9-2-3-6 INTACT COMPANION ANIMAL PERMIT OR ICAP.

Owners of dogs and cats over the age of six months that have not been Altered shall obtain an Intact Companion Animal Permit for those Animals.



(A) All Intact Companion Animals must be Permanently Identified by a Microchip or other identification method acceptable to the [Mayor][Mayor's designee] and registered with the AACC before an ICAP can be issued.

(B) No Person shall have more than four Intact Companion Animals in any Household.

(C) The Household shall be secure against ingress by Companion Animals of the same species or egress of the Companion Animal for which the ICAP is issued. The Household shall meet the standards of a Secure Facility or a Secure Fence.

(D) If an Intact Companion Animal that has been issued an ICAP is Impounded twice by AACC, the ICAP will be automatically revoked and the Intact Companion Animal will be required to be Altered. If an Intact Companion Animal is Impounded twice and must therefore be Altered, the Permit Holder shall pay AACC to Alter the Companion Animal.

(E) If an ICAP Holder wants to breed an Intact Companion Animal or if a female Intact Companion Animal has been impregnated, the ICAP Holder must obtain a Litter Permit prior to the birth of the Litter.

(F) *Medical Waiver Certificate.*

(1) If Alteration of a Companion Animal would endanger the health of the Companion Animal due to age or illness, a Veterinarian may complete a Medical Waiver Certificate stating the reasons why the Companion Animal should not be Altered.

(2) The Medical Waiver Certificate must include a description of the Companion Animal, including the Permanent Identification information.

(3) Upon receipt of a Medical Waiver Certificate, the [Mayor][Mayor's designee] may request a second opinion from a different Veterinarian.

(4) The [Mayor][Mayor's designee] may direct the AACC Veterinarian to examine any Animal listed in a Medical Waiver Certificate if there appears to be an abundance of Medical Waiver Certificates from one particular Veterinarian or Veterinary clinic.

(5) If there is a difference of opinion between the two Veterinarians as to whether the Companion Animal may be safely Altered, a written notice will be provided to the Owner indicating that a Medical Waiver Certificate has been rejected. The Owner will then be required to Alter the Animal or pay for an Intact Companion Animal Permit. The decision to deny a Medical Waiver Certificate due to a difference in professional opinions by two Veterinarians may be subject to appeal by the Owner.

(6) Upon the acceptance of a Medical Waiver Certificate by AACC, the Owner shall be

issued an Intact Companion Animal Permit free of charge.

(7) Medical Waiver Certificates shall be valid for one year. Upon expiration of the Medical Waiver Certificate, the Owner shall be required to reapply for the Intact Companion Animal Permit.”

SECTION 9. § 9-2-3-8 (D) is hereby amended as follows:

“ (D) No Person shall keep or maintain more than 15 Companion Animals at any MCASP site, no more than four of which can be Intact. This limit may be exceeded under special circumstances determined by the [Mayor][Mayor’s designee].”

SECTION 10. § 9-2-3-9 through §9-2-3-10 are hereby amended as follows:

“§ 9-2-3-9 PERMISSIBLE EXOTIC OR WILD ANIMAL COLLECTION PERMIT OR EWACP.

(A) Any Person who wishes to receive, purchase, own or keep 15 or more Permissible Exotic or Wild Animals shall first obtain an Exotic or Wild Animal Collection Permit (EWACP).

(B) The applicant shall supply AACC with a list of all Exotics owned by the applicant. The EWACP Holder shall supply an updated list every year as part of the Permit renewal process.

(C) Notwithstanding the foregoing, zoological parks, Rehabilitators licensed through the State of New Mexico, Veterinary hospitals, and the humane society shelters are excluded from the provisions of this section, provided that the excluded facilities use protective devices adequate to prevent the Exotic or Wild Animals from escaping or injuring the public and the Animals will not be used in any kind of testing or experimentation. The city expects these excluded entities to treat the Exotic or Wild Animals in their possession in a humane manner as stated in this article.

(D) No Person shall own, harbor or keep any species in violation of federal or New Mexico law.

(E) Exotic or Wild Animals shall never be released from captivity within the city limits without written permission from the [Mayor][Mayor’s designee] whether or not the Owner has an EWACP.

(F) The [Mayor][Mayor’s designee] may Seize the Exotic or Wild Animal for its Owner’s failure to obtain an EWACP or comply with this article and such Animal shall become the property of the city. The EWACP Holder or Owner of the Exotic or Wild Animal is liable for any costs incurred by the city and such costs may result in a lien being placed against the Exotic or Wild Animal.

(G) The [Mayor][Mayor’s designee] shall use Seizure procedures which protect the public, the Exotic or Wild Animal and other Animals. The [Mayor][Mayor’s designee] may convey an Exotic or Wild Animal in his possession to any Zoo, Sanctuary or refuge or dispose of the Animal in a

Humane Manner.

§ 9-2-3-10 GUARD DOG SITE PERMIT OR GDSP.

Any Person wishing to operate a Guard Dog Site shall obtain a Guard Dog Site Permit (GDSP).

(A) Any Person wishing to operate a Guard Dog Site shall have a Tax ID number and be registered under the Albuquerque Business Registration Ordinance before applying for a GDSP.

(B) The Owner of the Guard Dog must have an Intact Companion Animal Permit for each Intact dog.

(C) The GDSP attaches to the real property and the GDSP Holder may not transfer Guard Dogs to a separate site lacking a GDSP.

(D) A GDSP will not be granted for property in a Residential Zone or within 250 feet of a school.

(E) When a Guard Dog is on duty outside of a building, the premises must be enclosed by a Secure Fence.

(F) The escape of a Guard Dog from a Guard Dog Site is a violation of this article and can constitute a basis for revocation of a GDSP and seizure of the dog.

(G) If the ~~Mayor~~Mayor's designee determines it is necessary to control noise at the Guard Dog Site, the ~~Mayor~~Mayor's designee may require the Owner of the site or GDSP Holder to construct a barrier which breaks the Guard Dog's line of sight to the exterior and adequately buffers the noise.

(H) The doors, windows, and all other openings to the outside of a building where a Guard Dog is on duty must be secured to prevent its escape.

(I) The Guard Dog Site shall be posted with warning signs that are at least 12 inches by 12 inches.

(1) The warning signs shall state "Guard Dog" and "Guardia" and shall show a picture of an aggressive dog.

(2) The warning signs shall be posted not more than 50 feet apart on the exterior of the fences or walls surrounding the site, and shall be posted at all exterior corners of the site and at every entrance to the site.

(J) Vehicles used to transport Guard Dogs shall be secured so the public is protected from Injury, shall be constructed or modified to ensure that the Guard Dog is transported in a safe, humane manner and that does not violate §§ 9-2-2-6 et seq., and shall be posted with warning signs on each side of the vehicle.

(K) A GDSP Holder shall not apply for a Litter Permit or Multiple Companion Animal Site Permit for the Guard Dog Site. No breeding of Animals is allowed at a Guard Dog Site.

SECTION 11. §9-2-3-12 through §9-2-3-14 are hereby amended as follows:

“§ 9-2-3-12 PET STORE PERMIT OR PSP.

Pet Stores shall not sell Companion Animals but may sell other living creatures including[, but not limited to,] fish, birds, rodents, insects, arachnids, reptiles and other Permissible Exotic Animal.

(A) No Pet Store shall conduct business in the city without a Pet Store Permit (PSP).

(B) The applicant for a PSP must have a valid Tax ID Number and a City of Albuquerque Business Registration under the Business Registration Ordinance before applying for a PSP.

(C) The PSP must attach to a specific real property commercial site.

(D) No PSP Holder may sell or offer for sale any Animal from a mobile facility or at a site away from the PSP site.

(E) A PSP Holder shall not apply for or obtain an Intact Companion Animal Permit, Litter Permit or Multiple Companion Animal Site Permit.

(F) PSP Holders are liable for the medical costs including medicine, up to the amount the Animal was sold for, for any Animal that is diagnosed as sick by a Veterinarian qualified for the species within one week from the date of sale.

(G) The PSP Holder shall reimburse the patron the costs associated with the sick Animal, up to the amount paid by the patron when the Animal was purchased.

(H) The patron shall be allowed to keep the Animal, even if the PSP Holder pays the medical costs.

(I) The patron or the PSP Holder may appeal to the Administrative Hearing Officer if there is a dispute as to the fact of the illness or the amount of the charges. If the PSP Holder does not prevail on appeal, the PSP Holder shall reimburse the costs of the appeal to the patron.

(J) Thorough and accurate records for each Animal that passes through a PSP site must be maintained and kept for three years and must be made available upon demand by the [Mayor][Mayor's designee]. These records shall include[, but are not limited to,] the name, address and telephone number of each Person who bought an Animal and information on where each Animal came from originally.

(K) Animals with known or suspected communicable diseases shall be isolated, as

appropriate, and treated as soon as possible.

(L) The daily use of antibiotics for preventative purposes, and not to treat a specific illness or condition, is prohibited whether administered in food, water or by any other method.

#### § 9-2-3-13 TROLLEY PERMIT.

The Owner of a Dog who has exhausted all options for restricting its dog to its property may apply for a one year Trolley Permit.

(A) The ~~[Mayor]~~[Mayor's designee] may issue a Trolley Permit upon an applicant's proving the following:

(1) All other methods of restricting the dog to the property of the Owner have been exhausted.

(2) A Trolley is deemed the only acceptable temporary method to keep the Animal on the Owner's property.

(3) The dog has been spayed or neutered and Microchipped.

(B) No more than one dog per Household will be allowed to use a Trolley.

(C) A dog attached to a Trolley shall be surrounded by a barrier sufficient to protect the dog from At Large Animals. The barrier shall be sufficient to prevent children from accidentally coming into contact with the dog on the Trolley.

(D) No dog shall be left on a Trolley for longer than nine hours in a 24 hour period.

(E) Trolley Permits are good for one year only, in which time the Owner must come up with an acceptable method of restricting the dog to his property. Trolley Permits will not be renewed.

(F) AACC shall work with various Animal volunteer organizations in order to help Owners locate resources to deal with restraint issues.

#### § 9-2-3-14 ANIMAL-DRAWN VEHICLE PERMIT OR ADVP.

Any Person intending to do business operating an Animal-Drawn Vehicle shall apply for an Animal-Drawn Vehicle Permit (ADVP).

(A) Any person applying for an ADVP must have a valid Tax ID Number and a City of Albuquerque Business Registration under the Business Registration Ordinance before applying for the Permit.

(B) All operators and Owners of Animal-Drawn Vehicles shall be subject to the following additional requirements:

(1) All Animals used to pull any wagon, cart, carriage or other vehicle must weigh at least 800 pounds and be considered in good health. Any Owner or operator of an Animal-Drawn

Vehicle who desires to use a smaller Animal shall apply to AACC for approval, in writing, prior to such use.

(2) Animals used to pull Animal-Drawn Vehicles exhibiting any of the following shall be deemed unfit for work and shall be under the care of a Veterinarian:

- (a) Sores or abrasions caused, or likely to be irritated, by girth, harnesses or bridles;
- (b) Serious injury or illness; or
- (c) Obvious signs of emaciation, malnutrition, lameness or exhaustion.

(3) Animals used to pull Animal-Drawn Vehicles requiring Veterinary care shall not be moved, ridden or driven except for the purpose of pasturing or obtaining medical care.

(4) Enclosures where Animals are kept shall be graded and raked so as to keep the surface reasonably dry.

(5) Animals used to pull Animal-Drawn Vehicles shall be allocated at least 30 minutes of rest for every two hour work period. The maximum working period for any one Animal shall be eight hours in every 24 hour period. No Animal used to pull an Animal- Drawn Vehicle shall be overridden or driven in a manner that might result in overheating or exhaustion.

(6) Animals used to pull Animal-Drawn Vehicles shall not be worked when the temperature at street level at any loading site reaches or exceeds 95 degrees Fahrenheit.

(7) Animals used to pull Animal-Drawn Vehicles shall not be driven at a speed exceeding a slow trot.

(8) Animals used to pull Animal-Drawn Vehicles shall be provided Potable Water at every loading site and at least once an hour while they are working.

(9) All harnesses and other tack shall be kept oiled, cleaned and in good repair.

(10) Wagons, carts, carriages or other vehicles must be kept properly lubricated, and all wheels must spin freely.

(11) In addition to issuing any applicable citations, the ~~[Mayor]~~[Mayor's designee] may order a Quarantine of the entire premises where the Animals used to pull Animal- Drawn Vehicles are being stabled or any part thereof for any of the following conditions in one or more of the Animals:

(a) Excessive parasitism, diagnosed by a Veterinarian, which could cause any Animal to be unfit to be ridden or driven; or

(b) General malnutrition as diagnosed by a Veterinarian; or

(c) Presence or suspicion of contagious or transmittable disease as diagnosed by a Veterinarian.

(12) Owners and operators of Animal-Drawn Vehicles shall not permit unsanitary conditions to be present on any route or in any Animal rest area or area where animals are kept. All such areas shall be kept clean and free of conditions which might attract insects, parasites or rodents.”

SECTION 12. § 9-2-3-16 PERMIT FEES(A) is hereby amended as follows:

“ (A) Sixty percent of all net Permit fees collected under the HEART Ordinance and 60% of fees for microchipping, spaying and neutering performed by the City, shall be dedicated exclusively to programs for the free microchipping and the free spaying and neutering of Companion Animals for Low Income Persons, Moderate Income Persons, Seniors and when possible, the general public. All fees listed in this article are a minimum fee amount and may be increased administratively by the [Mayor][Mayor’s designee].”

SECTION 13. § 9-2-4-4 (A) and (B) are hereby amended as follows:

“ (A) *Public Property*. No Person shall display, sell, deliver, offer for sale, barter, auction, give away, or otherwise dispose of an Animal upon a street, sidewalk, public park, public right-of-way or other public property. Adoption events approved by the [Mayor][Mayor’s designee], or any adoption events held by a Rescue Group or Rescue individual are exempt.

(B) *Commercial Property*. No Person shall display, sell, deliver, offer for sale, barter, auction, give away, or otherwise dispose of any Animal upon commercial property including parking lots, with or without the property owner's permission. PSP Holders are limited to the property the Permit was issued for. Adoption events approved by the [Mayor][Mayor’s designee] are exempt.”

SECTION 14. § 9-2-4-5 is hereby amended as follows:

“§ 9-2-4-5 ANIMAL RACING.

It shall be unlawful for any person to hold, conduct, attend or operate live Animal racing for public exhibition, pari-mutuel betting or special exhibition events. The exception to this prohibition is horse racing and charitable events with the approval of the [Mayor][Mayor’s designee].”

SECTION 15. § 9-2-4-8(C) is hereby amended as follows:

“ (C) No Person shall commit the offense of Cockfighting. When any Person is charged with Cockfighting, the [Mayor][Mayor’s designee] shall take the Fighting Birds at the location into Protective Custody. A Person commits the offense of Cockfighting if the person knowingly:

- (1) owns, possesses, keeps, rears, breeds, trains, buys, sells, transports, or advertises or otherwise offers to sell a Fighting Bird;
- (2) promotes or participates in, or performs services in furtherance of, the conducting of a Cockfight. Services in furtherance of a Cockfight include[~~, but are not limited to,~~] transporting spectators to a Cockfight, handling Fighting Birds, organizing, advertising or refereeing a Cockfight and providing, or acting as a stakeholder for, money wagered on a Cockfight;
- (3) keeps, uses or manages, or accepts payment of admission to, a place for the conducting of a Cockfight;
- (4) suffers or permits a place in the possession or control of the Person to be occupied, kept or used for the conducting of a Cockfight;
- (5) manufactures, buys, sells, barter, exchanges, possesses, advertises or otherwise offers to sell a Gaff, Slasher or other sharp implement designed for attachment to a Fighting Bird or any other bird; or
- (6) attends a Cockfight or pays admission at any location to view or bet on a Cockfight.”

SECTION 16. § 9-2-5-1(B) is hereby amended as follows:

“ (B) *Found Companion Animal.*

- (1) Any Person who finds a Stray Companion Animal may possess and temporarily care for such Companion Animal pursuant to the terms of this article.
- (2) The provisions of this article apply equally to both the Finder and the Owner.
- (3) The Finder may keep such Companion Animal at the Household of the Finder and need not deliver the Animal to AACC so long as the requirements of this section are met.
- (4) These provisions do not apply if the Companion Animal is Owned or claimed by any Person known to the Finder and is or may be the subject of a dispute between the Finder and any other Person concerning ownership or Custody of the Companion Animal.
- (5) Within 24 hours of the time the Companion Animal is found, the Finder must contact AACC and register as a Finder with AACC.
- (6) No Person who does not qualify as a Qualified Adopter shall register or be allowed to register hereunder and such Person must immediately surrender the Found Animal to AACC upon demand of the ~~[Mayer]~~[Mayor's designee].
- (7) To register, the Finder shall provide a description of the Companion Animal including, when applicable, any License, Microchip or other identification on the Companion Animal, the time



and date when the Animal was found, and the location where the Animal was found.

(8) The Finder shall determine if the Companion Animal is Microchipped by taking the Companion Animal to any Person who can scan and read a Microchip, by calling AACC and requesting an ASO to come to the Household to scan the Animal or by delivering the Animal to AACC so it can be scanned.

(9) If the Companion Animal is Microchipped, the Finder shall provide the Microchip number to AACC.

(10) A registered Finder may exceed Companion Animal number limits while in temporary possession of a Found Companion Animal.

(11) If the Companion Animal is not Microchipped or Altered, the Finder does not have to Microchip or Alter said Animal while in temporary possession but shall Microchip or Alter the Companion Animal when and if the Finder becomes the Owner under this section.

(12) If the Finder wishes to own the Found Companion Animal, the Finder shall so notify AACC and said Animal shall become the property of the Finder 10 days from the registration date if no Person Reclaims the Companion Animal.

(13) Within the 10 days, if any Person purports to be the actual Owner of the Companion Animal, such Person shall contact AACC and not the Finder. The ~~[Mayor]~~[Mayor's designee] may require Proof of Ownership. If the claimant is in fact the Owner, the ~~[Mayor]~~[Mayor's designee] shall order the registered Finder to return the Companion Animal to AACC for Reclaim by the Owner and the Finder shall comply.”

SECTION 17. § 9-2-6-1 is hereby amended as follows:

“§ 9-2-6-1 RABIES.

(A) An Anti-Rabies Vaccination shall be administered as often as required according to state law. The duty to provide an Anti-Rabies Vaccination does not discharge the Owner from the duty to provide other Vaccinations and reasonable medical treatment for Companion Animals.

(B) *Anti-Rabies Vaccination.* All Owners of Companion Animals or ferrets over the age of three months shall have Companion Animals and ferrets Vaccinated against rabies no less frequently than required under New Mexico State law. The Anti-Rabies Vaccination shall be administered by a Veterinarian who also shall issue an Anti-Rabies Vaccination certificate and tag. The ~~[Mayor]~~[Mayor's designee] may require Animals other than Companion Animals or ferrets to receive annual Anti- Rabies Vaccinations. The Veterinarian administering the Anti-Rabies Vaccine to an

Animal shall issue the Owner an Anti-Rabies Vaccination certificate and tag, each bearing the same number. The Veterinarian shall legibly record, on the approved certificate, in the appropriate areas the name and address of the Owner of the Animal, a description of the Animal, the date of Vaccination and the expiration date of the period of immunity, sterilization status, and Veterinary practice name. This information shall be delivered by the Veterinarian to the [Mayor][Mayor's designee] in accordance with this article. The Owner of a Companion Animal or a ferret shall produce its certificate of Anti-Rabies Vaccination upon demand by the [Mayor][Mayor's designee].

(C) *Potentially Rabid Animals.* The Owner of an Animal having rabies or showing signs of rabies, an Animal bitten by a rabid Animal or an Animal that has been exposed to rabies shall immediately isolate the Animal in a Secure Facility or within a Secure Fence where it cannot possibly come into contact with any other Animals or humans other than the Owner. Any Person who has knowledge of an Animal infected by or exposed to rabies shall immediately notify the [Mayor][Mayor's designee] of the location of the affected Animal. The Animal shall be surrendered by its Owner to the [Mayor][Mayor's designee] upon demand. The Animal shall be dealt with in accordance with state law.

It is the duty of the Owner of an Animal that Bites a Person and of the Person bitten by an Animal to report the Bite to the [Mayor][Mayor's designee] within 24 hours after the Bite occurs. If deemed necessary by the [Mayor][Mayor's designee], the Owner shall surrender the Animal to the [Mayor][Mayor's designee] for Impoundment, Quarantine, observation or destruction and rabies testing at the [Mayor][Mayor's designee]'s discretion. A physician who renders medical treatment to a Person bitten by an Animal shall report the Bite to the [Mayor][Mayor's designee] within 24 hours of such treatment. Such medical treatment shall be paid for by the Owner of the Animal. The physician shall report the name, sex, and address of the Person bitten, as well as the type and location of the Bite on the Person's body. The physician shall give the name and address of the Owner of the Animal to the [Mayor][Mayor's designee] and, if known, any other facts that may assist the [Mayor][Mayor's designee] in locating the biting Animal and in ascertaining the immunization status of the Animal.

(D) *Quarantine.* An Animal that has bitten or is suspected of biting a Person shall be confined securely at a location for a period of time deemed necessary by the [Mayor][Mayor's designee]. The Owner of the Animal shall be responsible for and bear the cost of confinement. If the Owner does not confine the Animal as required by the [Mayor][Mayor's designee], the [Mayor][Mayor's designee] may Seize and Impound the Animal and will keep it under Protective Custody at AACC

for no longer than [fifteen][15] days and the Owner shall pay all related costs before Reclaiming the Animal. After 15 days of Protective Custody under this subsection, the Animal will become the property of the City and may be routed or disposed of under the terms of this article. The [Mayor][Mayor's designee] may consent to confinement on the Owner's premises only if the Owner can prove to the [Mayor][Mayor's designee]'s satisfaction that the Animal cannot escape. Before the Owner's premises can be used for Animal confinement, the premises shall be inspected and must be approved for such purpose by the [Mayor][Mayor's designee]. A Person who has custody of an Animal that has bitten a Person shall immediately notify the [Mayor][Mayor's designee] if the Animal shows any signs of sickness, abnormal behavior or if the Animal escapes confinement. If the Animal dies while in confinement, the Person having custody of the Animal shall notify the [Mayor][Mayor's designee] immediately and surrender the deceased Animal to the [Mayor][Mayor's designee]. Any Animal Quarantined for rabies will, on completion of the Quarantine period, be Microchipped for positive and Permanent Identification as a condition of Quarantine release or Reclaim. An Animal being Quarantined by AACC will receive the Microchip prior to being released. The Owners of any Animal Quarantined by the Owner will immediately make arrangements for Microchipping their Quarantined Animal with a Veterinarian of their choice or AACC, with the cost for such services being borne by the Owner. Microchipping a Quarantined Animal must be completed within 10 days of the Quarantine and failure to do so is a violation of this article.

(E) *Veterinarians.*

- (1) Each Veterinarian that Vaccinates shall deliver to the city information regarding all Anti-Rabies Vaccinations administered during the preceding month by the fifteenth day of the following month by either hard copy or in an electronic format approved by the city.
- (2) Approved Veterinarians shall receive a credit of fifty cents for each Vaccination certificate submitted as a hard copy and one dollar for each submitted electronically. The credits will only be granted if the information is received by the fifteenth day of the month immediately following the month in which the Vaccination certificate was issued and if the information is complete and accurate as determined by the [Mayor][Mayor's designee].
- (3) Veterinarians shall post and maintain a sign clearly visible to the public stating that dogs and cats must be spayed, neutered or permitted in accordance with the ordinance [including the proper citation] and have anti-rabies vaccinations as mandated by the State of New Mexico and the City of Albuquerque. AACC will provide one sign free to each Veterinarian."

SECTION 18. § 9-2-7-1 is hereby amended as follows:

“§ 9-2-7-1 INSPECTIONS AND HEARING PROCESS.

(A) Permitted matters must be regulated by the city to protect Animals and the public. A Permit gives a Person the privilege to possess Animals and engage in activities in exchange for an agreement by the Permit Holder to care for Animals pursuant to the standards in this article and protect the public. A Permit is not a property right and can be revoked, suspended, conditioned or limited by the city. The city may declare moratoria regarding the issuance of Permits or temporarily limit or condition Permits from time to time. Any Person who does not have a Permit and is engaged in any activity that requires a Permit under this article is guilty of a petty misdemeanor under § 1-1-99 ROA 1994. Each day of activity without a Permit is a separate petty misdemeanor offense. The absence of a Permit and engagement in activity prohibited hereunder is prima facie evidence of a petty misdemeanor. Permits automatically expire one year from the date granted unless otherwise specifically provided in this article. Permits are not transferable. The ~~[Mayor]~~[Mayor's designee] may promulgate regulations consistent with this article. The following provisions apply to revocation, suspension or limitation and other administrative enforcement actions concerning Permits.

(B) *Violations and Inspections.* If the ~~[Mayor]~~[Mayor's designee] discovers a violation of this article by a Permit Holder or any citizen complains about the activities allowed under a Permit and the ~~[Mayor]~~[Mayor's designee] finds that such complaint is valid, the ~~[Mayor]~~[Mayor's designee] shall give notice of the violations by means of an inspection report or other written notice. The notification shall:

- (1) Set forth each specific violation;
- (2) Establish a specific and reasonable period of time for the correction of the violation;
- (3) State that failure to comply with a notice issued in accordance with the provisions of this article may result in [ a civil fine being assessed or ] immediate suspension or revocation of the Permit; ~~[and]~~
- (4) State that an opportunity for appeal from a notice or inspection findings will be provided if a written request for a hearing is filed with the ~~[Mayor ]~~[Office of the City Clerk] within ~~[five 15]~~ days of receipt of the notice [ in accordance with the procedures outlined in the Independent Office of Hearings Ordinance, ROA 1994, Sections 2-7-8-1 to 2-7-8-9; and
- (5) Where a civil fine has been assessed: state the amount of the fine assessed; state that

the fine must be paid in full within 30 days of the date of the notice; and contain instructions for how the fine can be paid.]

(C) *Notice.* Notices under this section shall be deemed properly served and received when the original inspection report or other notice has been personally served on the Person in Charge or sent by registered or certified mail to the last known address of the Permit Holder.

(D) *Suspension.* Permits may be suspended for failure of the Holder to comply with the requirements of this article or other applicable laws, ordinances or regulations. The suspension may be lifted when the [Mayor][Mayor's designee] determines the violations have been corrected.

(E) *Revocation.* Permits may be revoked for serious or repeated violations of the requirements of this article, or for violation of other applicable laws, ordinances or regulations. A Permit revocation is permanent and a second Permit of any kind will not be granted to the previous Holder or any Person in privity with the previous Holder. The Permit shall be surrendered to the [Mayor][Mayor's designee] upon suspension or revocation.

[ (F) *Civil Fine.* The Mayor's designee may impose a civil fine of \$200 for a first violation of this article, \$300 for a second violation of this article and \$500 for a third or subsequent violation of this article. Notice of the civil fine shall be appealable under the administrative appeal procedures of this article. Failure to pay the fine, appeal the fine, or prevail at an administrative hearing challenging the fine shall allow the Mayor's designee to place a lien upon any asset owned by the Permit Holder. The Mayor's designee may also collect on the fine through any other method allowed by law.]

([G][F]) *Reinspection.* A Person whose Permit has been suspended may apply for an inspection of the premises for the purpose of reinstating the Permit by filing an additional application for a Permit at AACC on the form provided by the [Mayor][Mayor's designee]. Within five working days after AACC receives the application, the [Mayor][Mayor's designee] shall make an inspection. If the applicant and the site are in compliance with the requirements of this article and all other applicable laws, regulations, and ordinances, the Permit shall be reinstated. The reinstated Permit shall expire on the date of expiration of the previously suspended permit.

([H][G]) *Revocation of Exotic or Wild Animal Permit.* If an Exotic or Wild Animal Permit is suspended or revoked, all Animals received, purchased, owned or kept under the authority of the Permit shall be surrendered to the [Mayor][Mayor's designee] for Impoundment as provided in the Impoundment section of this article. After a period of at least seven days, if the violations of the article which resulted in suspension or revocation of the Permit have not been corrected, the [

Mayor][Mayor's designee] may sell or dispose of the Animal(s) in a humane manner.

(I)[H] *Appeal.* A Person [who has been assessed a civil fine or ]whose application for a Permit or Permit renewal has been approved on condition or denied, and a Permit Holder whose Permit has been suspended or revoked, may submit to the [Mayor][City Clerk] a written request for a hearing, provided that the written request is received [at AAGG][by the City Clerk ]within [five ][15 ]days of the applicant's receipt of the written notice of denial[,] [or ]conditional approval[ or civil fine]. The hearing shall be conducted [within a reasonable time] [in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8].

(I) *Hearing.* Hearings shall be conducted by the Mayor at a time and a place designated by the Mayor and shall be recorded. All witnesses shall be sworn or affirmed. ~~Written notice of the time, date and place of the hearing shall be mailed to the applicant and the Mayor.]~~

(J) *Preclusion and Default.* The Administrative Hearing Officer may render a decision without proceeding with the hearing if the Administrative Hearing Officer determines that the issue has been previously decided in another proceeding which provided due process. If the applicant or the [Mayor][Mayor's designee] fails to appear at a scheduled hearing, the Hearing Officer may postpone the hearing for a period of no more than five business days or may determine that the absent party has waived his right to a hearing. Both parties shall be notified of such determination.

(K) *Recording.* The hearing shall be recorded by audio method, but need not be transcribed unless a written transcript is requested, in which case the cost of transcription shall be borne by the party requesting transcription. If one party prefers to have the hearing transcribed by a court reporter, that party shall pay all directly related costs, and the party requesting transcription shall pay the cost of transcription.

(L) *Decision.* The Hearing Officer shall prepare a written report of his findings and decision within ten days after the hearing and shall provide copies to the parties.[ Following a hearing, the respondent may appeal the decision of the Hearing Officer to the District Court within 30 days of the decision.]

(M) *Fee.* A nonrefundable hearing fee of \$50 shall accompany the appeal to the [Mayor][City Clerk] filed pursuant to this section.

SECTION 19. SEVERABILITY CLAUSE. 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 20. COMPILATION. Sections 1 through 18 of this Ordinance shall amend, be incorporated in, and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 21. EFFECTIVE DATE. This Ordinance shall take effect five (5) days after publication by title and general summary.