



Legislation Text

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CITY of ALBUQUERQUE
TWENTY SIXTH COUNCIL

COUNCIL BILL NO. O-24-63 ENACTMENT NO. _____

SPONSORED BY: Renée Grout, by request

ORDINANCE

Repealing Chapter 11, Article 1, Parts 1 And 2 Related To Nuisance Abatement And Replacing It With A New Nuisance Abatement Ordinance (Grout, by request)

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

SECTION 1. REPEAL

Chapter 11, Article 1, Parts 1 and 2 R.O.A. 1994 is hereby repealed in its entirety.

SECTION 2. NEW MATERIAL.

Chapter 11, Article 11 is hereby added to read as follows:

“PART 1: NUISANCE ABATEMENT

SUBPART A: GENERAL PROVISIONS

§ 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 and to establish procedures to eliminate and abate nuisances.

§ 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 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 necessary for purposes of inventory, maintenance, storage, security, and other purposes.

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

IMMINENT HAZARD. A condition where creates an immediate and articulable risk of serious injury or death to persons in the vicinity.

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

PUBLIC NUISANCE. Any acts or omissions that adversely affect public health, welfare, or safety. Acts or omissions that may be deemed a public nuisance include, but are not limited to, the following:

- (1) Any criminal activity on three or more occasions within a three-month period;
- (2) The failure to secure the doorways or window openings of any building or structure to prevent the entry of unauthorized persons, where such failure leads to repeat activity that adversely affects public health, welfare or safety;

- (3) Three or more violations of the following City ordinances within a three-month period:
- (a) Noise Control Ordinance § 9-9-4 or 9-9-7 ROA 1994;
 - (b) Food Sanitation Ordinance, § 9-6-1-1 to § 9-6-1-99 ROA 1994;
 - (c) 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;
 - (d) Humane and Ethical Animal Rules and Treatment (HEART) Ordinance, § 9-2-4-7 ROA 1994, Animal Noise;
 - (e) Humane and Ethical Animal Rules and Treatment (HEART) Ordinance, § 9-2-4-8 ROA 1994, Animal Fights;
 - (f) Albuquerque Insect and Rodent Control Ordinance, § 9-7-1 to § 9-7-99 ROA 1994;
 - (g) Weed and Litter Ordinance, § 9-8-1 to § 9-8-99 ROA 1994;
 - (h) Uniform Housing Code, § 14-3-1-1 to § 14-3-5-99 ROA 1994; or
 - (i) Fire Code, § 14-2-1 ROA 1994.
- (4) Any acts or omissions that would be deemed a public nuisance under common law.

REAL PROPERTY. Land and all improvements, buildings, and structures, and all estates rights and interests, legal and equitable, in the same, including 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.

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.

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.

§ 11-1-1-4 ADMINISTRATION.

The Mayor or Mayor's designee shall be responsible for the administration of this article and may promulgate reasonable rules and regulations to carry out the intent and purpose of this article.

§ 11-1-1-5 SEVERABILITY.

If any section, paragraph, sentence, clause, word or phrase of §§ 11-1-1-1 et seq. 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 §§ 11-1-1-1 et seq. The Council hereby declares that it would have passed §§ 11-1-1-1 et seq. and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SUBPART B:

CRIMINAL ABATEMENT OF PUBLIC NUISANCE OFFENSES

§ 11-1-1-6 PUBLIC NUISANCES PROHIBITED.

(A) It shall be unlawful for any person to engage in activities that constitute a public nuisance or to intentionally, knowingly, recklessly, or negligently commit, conduct, promote, facilitate, permit, fail to prevent, or otherwise allow, 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, within a reasonable time after 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 and other nuisance 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 wherein the property owner agrees to take specific steps, which may include providing on-site security or otherwise taking action that will abate, terminate or eliminate the public nuisance activity on the property in exchange for the City 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.

(C) No person shall be in violation of this ordinance if the nuisance designation is based solely on violations of the following and the individual is determined to be the victim of domestic violence:

(1) Assault against a household member, NMSA 1978, § 30-3-12;

(2) Aggravated assault against a household member, NMSA 1978, § 30-3-13;

(3) Assault against a household member with intent to commit a violent felony, NMSA 1978, § 30-3-14;

(4) Battery against a household member, NMSA 1978, § 30-3-15; or

(5) Aggravated battery against a household member, NMSA 1978, § 30-3-16.

§ 11-1-1-7 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 appropriate City agencies and/or the Bernalillo 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 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 landlord training, tenant background checks and screening, making improvements to the property, including general repairs which will bring the property into compliance with the Uniform Housing Code, §§ 14-3-1 et seq., ROA 1994, Integrated Development Ordinance, §§ 14-16-1-1, et seq., ROA 1994, including fencing, lighting, and destruction of structures, 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 Bernalillo 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, or on its website. 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 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.

SUBPART C:

CIVIL ABATEMENT OF PUBLIC NUISANCE OFFENSES

§ 11-1-1-8 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 from criminal use and as a base of criminal operations, 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.

(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, no 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.

(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.

(E) 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.

§ 11-1-1-9 CIVIL FINES.

(A) In addition to any other remedies available in this Ordinance or under the common law, the Mayor's designee may impose a civil fine of \$500 per day for any violation of this article.

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

- (1) The street address and a legal description of the subject property;**
- (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 a public nuisance 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 order or a lien may be placed upon the subject property or any asset owned by the subject property's owner and that the City may seek remedies, including foreclosure, for any unpaid liens;**

- (6) Instructions for how the fine can be paid;
- (7) A statement that payment plans or waivers may be available if the person can demonstrate hardship, low income or indigent status; and
- (8) 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 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.

(D) Appeal. Any individual who has been assessed a civil fine issued pursuant to this article may appeal that decision. The request for appeal and the hearing shall comply with the procedures outlined in the Independent Office of Hearings Ordinance, ROA 1994, §§ 2-7-8-1 to 2-7-8-9.

§ 11-1-1-10 ADMINISTRATIVE PROCEDURES FOR THE ABATEMENT OF NUISANCES.

(A) In addition to any other remedies available in this Ordinance or under the common law, the Mayor's designee may request an administrative hearing in order to obtain additional remedies needed to abate a public nuisance occurring on real property.

The action may be brought against the property where the nuisance has occurred, 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 a public nuisance, and any other persons whose involvement may be necessary to abate the nuisance, prevent it from recurring.

(B) To initiate an abatement action, the Mayor's designee shall issue a Notice of Public Nuisance and Intent to Cause Abatement to the property owner or other responsible person of the nuisance violation(s) occurring on or near the property in accordance with the procedures identified in ROA § 11-1-1-9(B).

- (1) The Notice shall identify the nuisance and the date of the occurrence. and include a statement that if the nuisance is not abated within fifteen (15) days, the City will request an administrative hearing.**
- (2) The Mayor's designee shall mail the Notice by certified mail, postage prepaid, return receipt requested, to the owner(s) of the real property and post the Notice at the main entrances to the buildings or at some other prominent place 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.**
- (3) The Notice shall include instructions in the top five non-English languages spoken in Albuquerque on how to obtain additional information and/or language services.**
- (4) 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.**
- (5) The Mayor's designee shall not be required to mail any notice whenever he or she determines that any of the following conditions exist:**
 - (a) The public nuisance poses an imminent hazard;**
 - (b) Notice could jeopardize a pending investigation of criminal or public nuisance activity, confidential informants, or other police activity; or**

(c) Other emergency circumstances exist.

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

(C) After providing the Notice required in § 11-1-1-10(B), the Mayor's designee may request an administrative hearing before the Independent Hearing Office ("IHO"), which shall have authority to determine whether a public nuisance exists, order abatement of the nuisance, and impose fines or other penalties. The hearing shall be conducted in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8 and pursuant to the New Mexico Rules of Civil Procedure.

(D) If the Hearing Officer determines that a violation of this ordinance has occurred, the hearing officer shall determine the remedies to be imposed. The Hearing Officer may order any responsible individuals to:

- a. Cease the activity causing the public nuisance;
- b. Abate the nuisance;
- c. Enter into a nuisance abatement agreement with the City;
- d. Permit the City to inspect the property to determine compliance;
- e. Close the business or building for a period of time not to exceed thirty (30) days; and
- f. Pay a civil fine not to exceed \$500 per violation per day.

(E) The Order shall state the determination of the hearing officer regarding the alleged violations listed in the notice of administrative civil enforcement and shall contain findings of fact and conclusions of law.

(F) Any party aggrieved by a final decision of the Hearing Officer may appeal the decision to District Court within 30 days of the final order.

(G) The Mayor's Designee shall monitor compliance with the order. If the Mayor's designee has reason to believe that any individual subject to the order is not complying with the order, the Mayor's designee may seek further relief before the IHO, commence a civil action in district court, or refer the matter to the District Attorney for the commencement of criminal proceedings.

(H) The IHO may retain jurisdiction to rescind or modify orders issued pursuant to this section.

(I) Transfer of property ownership shall not terminate any order issued pursuant to this

section. An acquiring property owner shall be responsible for compliance with any order or pending enforcement action against a nuisance property or its prior owner.

§ 11-1-1-11 CIVIL ACTIONS

- (A) In addition to any other remedies available in this Ordinance or under the common law, the City may pursue a civil action to obtain any relief necessary to abate a nuisance.
- (B) Civil actions brought under this ordinance shall be filed by the City Attorney for the City of Albuquerque. A private citizen, in the name of the state, may also bring an action under this ordinance.
- (C) A civil action brought under 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.
- (D) The defendants to a civil action under 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, 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.
- (E) 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 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. All notices shall include instructions in the top five non-English languages spoken in Albuquerque on how to obtain additional information and/or language services.

(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 (l)(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, encumbrancing 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.

§ 11-1-1-12 RELOCATION

(A) Whenever a civil action is filed 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 § 11-1-1-11(E) ROA 1994 is issued, subject to the provisions of division (A) (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 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 § 11-1-1-11(E) ROA 1994, at the time the notice that the city has filed a civil action under this Ordinance, 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 this Ordinance.

(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:

- i. The residents had a rental agreement at the time the notice was served on the residents;**
- ii. A court had issued an eviction order to the residents prior to the date the notice was served on the residents;**
- iii. The residents caused or substantially contributed to the conditions that were the basis of the notice to vacate;**
- iv. The conditions that were the basis for the notice to vacate were caused by fire, flood or other natural disasters;**
- v. The failure to meet the requirements of this code was due to the willful or negligent acts or omissions of the owner;**
- vi. The resident was in default for non-payment of rent;**
- vii. 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

viii. 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 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 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 in 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) The relocation agency shall provide assistance in finding alternative housing for residents who are displaced and qualify for relocation assistance under this ordinance.

(11) 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 rent increases, for purposes of attempting to have the resident vacate the residential building.

(12) The City shall be entitled to attorneys' fees and costs arising from any legal action to collect relocation costs assessed to owners.

§ 11-1-1-13 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 this ordinance.

§ 11-1-1-14 LIEN FOR JUDGMENTS.

In addition to any other remedies available in this Ordinance or under the common law, the City shall have a lien against the real property 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 Bernalillo County Clerk. . The City may seek foreclosure on properties with unpaid liens.

§ 11-1-1-15 EMERGENCY ABATEMENT.

(A) Notwithstanding any other provision in this code, if 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.

PART 2: DRUG LABORATORY SITE REMEDIATION OF CONTAMINATION

§ 11-1-2-1 TITLE.

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

§ 11-1-2-2 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.

§ 11-1-2-3 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 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 conducts

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 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.**

§ 11-1-2-4 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.

§ 11-1-2-5 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. 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 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 shall also be responsible for 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) 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) 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) 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) 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 (G) 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 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 the expense for posting, physical security of the contaminated site, notification of affected people, businesses or any other entity, 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 ROA 1994. The city or its contractors may remove property as part of its remediation effort.

PART 3: DRUG FREE ZONES

§ 11-1-3-1 INTENT.

The public purpose of §§ 11-1-3-1 et seq. is to decrease the number of occurrences of the illegal sale and purchase of drugs or imitation drugs in areas in the city where that number is significantly greater than in other areas of the city, and to protect the health, safety and welfare of citizens using the public right-of-way in such areas.

§ 11-1-3-2 SHORT TITLE.

Sections 11-1-3-1 et seq. may be cited as the “Drug Free Zone Ordinance.”

§ 11-1-3-3 FINDINGS.

The City Council makes the following findings:

- (A) Certain areas of the city have a significantly higher incidence of conduct associated with trafficking in narcotics and other controlled substances than other areas of the city. This concentration of narcotics activity contributes to the degradation of those areas and also adversely affects the overall quality of life for those areas' residents,

businesses, and visitors.

- (B) Many persons arrested in Albuquerque for delivering controlled substances or imitation controlled substances frequently return to the same location or general vicinity of their arrest because the area has proven to be a lucrative place for trafficking in controlled substances.
- (C) After arresting drug dealers, police officers frequently encounter the same persons shortly thereafter in the same area, engaging in the same criminal activity.
- (D) The City has a substantial and compelling interest in restoring the quality of life and protecting the health, safety, and welfare of citizens using the public right-of-way in such areas. The government has a substantial and compelling interest in allowing the public to use and enjoy the facilities in such areas without interference arising from sales of drugs or imitation drugs.
- (E) The processes presently available do not adequately control this type of activity and the detrimental effects on the areas where this activity occurs.
- (F) Individuals have a significant private interest in being able to travel and associate freely in all areas of the City. However, the public interest in preventing the harmful effects of drug dealing is so great that it justifies excluding the drug sellers for 90 days from an impacted area in which they have sold drugs or imitation drugs.
- (G) The City's health, safety and welfare would best be served by temporarily excluding from impacted areas those persons who are arrested therein for the unlawful delivery of controlled substances or of imitation controlled substances.
- (H) To minimize the likelihood of erroneous deprivation, the city should provide persons who are arrested therein for a crime listed in § 11-1-2-6 herein an opportunity to quickly challenge their exclusions and have a timely hearing before a hearing officer before their exclusion from the drug free zone becomes effective.
- (I) To ensure that health care and other legitimate needs are met, variances should be available to those individuals with compelling need to enter the drug free zone to preserve their health or well-being.

§ 11-1-3-4 DRUG FREE ZONES; CRITERIA.

Drug free zones are those areas where the number of arrests for conduct prohibited by Sections 3-31-20 through 25.1 NMSA 1978, Sections 3-31A-4 through 6 NMSA 1978, or § 12-4-16 of this code of ordinances, for the 24 month period preceding the original designation

is significantly higher than that for other similarly sized areas of the city.

§ 11-1-3-5 DESIGNATION OF DRUG FREE ZONE.

If the City Council designates an area meeting the criteria of § 11-1-2-4 to be a drug free zone, it shall do so by ordinance, and the designation shall be valid for an initial period of two years. Thereafter, the Council may extend the time of the designation as it deems appropriate, but in no event shall the total be more than ten years. The City Council may also remove the designation in the event it deems that appropriate. The removal of the designation shall be by ordinance.

§ 11-1-3-6 PERSONS SUBJECT TO EXCLUSION.

(A) A person is subject to exclusion for a period of 90 days from the public streets, sidewalks, and other public ways in all drug free zones designated in § 11-1-2-9 herein if that person has been arrested or otherwise taken into custody within any drug free zone for any of the following crimes:

- (1) Unlawful possession of a controlled substance, in violation of Section 3-31-23 NMSA 1978;**
- (2) Unlawful distribution of a controlled substance, in violation of Section 3-31-22 NMSA 1978;**
- (3) Trafficking a controlled substance, in violation of Section 30-31-20 NMSA 1978;**
- (4) Distributing a controlled substance to a minor, in violation of Section 30-31-21 NMSA 1978;**
- (5) Unlawful manufacture, distribution or possession of an imitation controlled substance, in violation of Section 30-31A-4 NMSA 1978 or § 12-4-16 of this code of ordinances; or**
- (6) Unlawful possession with intent to distribute an imitation controlled substance, in violation of Section 30-31A-6 NMSA 1978 or § 12-4-16 of this code of ordinances;**
- (7) Unlawful sale to a minor of an imitation controlled substance, in violation of Section 30-31A-5 NMSA 1978.**

(B) If a person excluded from all designated drug free zones is found in any drug free zone during the exclusion period, that person is subject to immediate arrest for criminal trespass pursuant to § 12-2-3 of this code of ordinances.

§ 11-1-3-7 AUTHORITY TO ISSUE EXCLUSION NOTICES.

The Mayor or the Mayor's designee shall be responsible for the public streets, sidewalks, and public ways in drug free zones for the purpose of issuing exclusion notices in accordance with §§ 11-1-2-1 et seq. The Mayor may authorize the Police Department to issue exclusion notices in accordance with §§ 11-1-2-1 et seq.

§ 11-1-3-8 NOTICE OF EXCLUSION.

At the time a person is arrested within a drug free zone for any of the crimes listed in § 11-1-2-6, the officer making such arrest may deliver to the person a written notice excluding the person from all drug free zones. The notice shall specify the areas designated as drug free zones from which that person is excluded and contain information concerning the right to appeal the exclusion notice to the hearing officer. The person to whom the exclusion notice is issued shall sign a written acknowledgment of receipt of the exclusion notice. If that person refuses to do so, the arresting officer shall make a written record of the refusal.

§ 11-1-3-9 APPEAL AND VARIANCE.

(A) The person to whom an exclusion notice is issued shall have a right to an appeal from the issuance of the notice.

- (1) An appeal of the exclusion must be filed, in writing, within five calendar days of the notice's issuance. A hearing on the appeal shall be had as provided herein.**
- (2) The exclusion shall not take effect during the pendency of the appeal. If no appeal is taken, the exclusion shall take effect on the sixth calendar day after the notice's issuance.**
- (3) The City shall have the burden to show by a preponderance of evidence that the exclusion is based on conduct which constitutes any of the crimes enumerated in § 11-1-2-6 herein. Copies of documents in its control and which are intended to be used by the city at the hearing shall be made available to the appellant at least two days prior to the hearing.**
- (4) The decision resulting from the hearing may be appealed to the state district court.**

(B)

- (1) A determination by a court having jurisdiction of the matter that the officer who issued the exclusion notice, at that time had probable cause to arrest the person to whom the exclusion notice was issued for violation of one or more crimes**

- enumerated in § 11-1-2-6 herein, shall be prima facie evidence that the exclusion was based on conduct proscribed by those statutes.
- (2) Variations from an exclusion may be granted at any time during the exclusion period by either the Mayor or Mayor's designate or by a social service agency which provides services within the drug free zone for which the variance is granted, only for reasons relating to the health or welfare, or well-being of the person excluded. The Mayor shall grant a variance to any person who can establish that he or she:
- (a) Was a bona fide resident of the drug free zone prior to receipt of the exclusion notice; or
- (b) Was a bona fide owner, principal or employee of a place of employment located in one of the designated drug free zones.
- (c) Must conduct official business with the city, county, state or federal governments, including the metropolitan, state and federal courts, in a drug free zone.
- (d) Desires to attend a house of worship located in one of the designated drug free zones.
- (3) The variance will allow access only to the designated drug free zone specified in the variance.
- (4) Only those social service agencies which have written rules and regulations prohibiting the use or sale of controlled substances by their clients and which have entered into a written agreement with the city concerning the applicability and enforceability of those rules are eligible to grant variances.
- (5) All variances shall be in writing, for a specific period of time and only to accommodate a specific purpose, all of which shall be stated on the variance. The person shall keep the variance on his or her person at all times the person is within the specific drug free zone for which the variance was granted. In the event a person having a variance is found to be outside the scope of the variance's terms, that person is thereupon subject to immediate arrest for criminal trespass pursuant to § 12-2-3 of this code of ordinances.
- (6) In the event a person holding a variance is arrested for conduct prohibited by state or federal law involving controlled substances, the variance shall

immediately become void and that person shall be ineligible for any new variances for a period of one year from the date of the arrest.

§ 11-1-3-10 LISTING OF DRUG FREE ZONES.

The following areas are designated as drug free zones:

- (A) The area which begins at a point at the intersection of Lomas Blvd. NW and 12th Street NW and proceeds east to the intersection of Lomas Blvd. NW and North Broadway, then proceeds north to Odelia NE, then proceeds east along Odelia/Indian School NE to the west boundary of Interstate 25 South, then proceeds south along Interstate 25 South to the intersection of Gibson SE and the interstate, then proceeds west to the intersection of Gibson SE and Broadway Blvd. SE, then proceeds south to the intersection of Broadway Blvd. SE and Bethel Avenue SW, then proceeds west to the intersection of Bethel Avenue and the Atchison Topeka and Santa Fe Railroad Right of Way, then north along the railroad right of way to the intersection of Bridge Blvd. SW and the railroad right of way, then proceeds west along Bridge Blvd. SW to the intersection of Bridge Blvd. and 8th Street SW, then proceeds north along 8th Street SW to the intersection of 8th Street and Coal Avenue SW, then proceeds west along Coal Avenue SW to the intersection of Coal Avenue and 10th Street SW, then proceeds north along 10th Street to the intersection of 10th Street and Copper NW and Central NW, then proceeds northwest along Central NW to the intersection of Central Avenue and 12th Street NW, then proceeds north along 12th Street to the point of origin at the intersection of 12th Street NW and Lomas Blvd. NW, including the public right-of-way.
- (B) The area which begins at the point of the intersection of Copper NE and Eubank NE and proceeds south to the intersection of Eubank NE and Central NE, then proceeds west to the intersection of Central and Zuni SE, then proceeds west to the intersection of Zuni and Wyoming SE, then proceeds south to the municipal limits and follows the municipal limits westerly to the intersection of Ridgecrest and San Mateo SE, then proceeds north to the intersection of San Mateo and Zuni SE, then proceeds west along Zuni, then Lead SE to the intersection of Lead and Carlisle SE, then proceeds north to the intersection of Central and Carlisle NE, then proceeds east to the intersection of Central and Louisiana NE, then proceeds north to the intersection of Louisiana and Lomas, NE, then proceeds east to the intersection of Lomas and Wyoming NE, then proceeds south to the intersection of Wyoming and Copper NE,

then proceeds east to the point of origin at the intersection of Copper NE and Eubank NE, including the public right-of-way. The area which falls within a line which begins at the intersection of Rio Grande Blvd. NW and Los Anayas Road NW and proceeds west to the intersection of Los Anayas Road and Gabaldon Road NW, then proceeds south to the intersection of Gabaldon Road NW and the municipal boundary, then proceeds easterly and southeasterly along the municipal boundary to the Duranes Ditch, then proceeds southerly along the municipal boundary to the intersection of Montoya Street NW and Maximillian Road NW, then proceeds westerly along the municipal boundary to the Riverside Drain, then proceeds southerly along the Riverside Drain to the intersection of the Riverside Drain and Central Avenue NW, then proceeds easterly along Central Avenue NW to the intersection of Central Avenue NW and Rio Grande Blvd. NW, then proceeds north along Rio Grande Blvd. NW to the point of origin at the intersection of Rio Grande Blvd. NW and Los Anayas Road NW, including the public right-of-way, and excluding any unincorporated areas of Bernalillo County that fall within the designated area.]”

SECTION 3. COMPILATION. Sections 1 and 2 of this Ordinance amends, is incorporated in, and is to be compiled as a part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five (5) days after publication by title and general summary.