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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.”

(Ord. 19-2001)

§ 11-1-1-2 INTENT.

The purpose of this ordinance is to prevent the use of property as a public nuisance.

(Ord. 19-2001)

§ 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.

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, § 13-3-1-4 ROA 1994; or
- (78) Violations of City of Albuquerque Housing Code defining substandard building, § 14-3-4-1 ROA 1994; or
- (79) Violations of the City of Albuquerque Fire Codes, § 14-2-1 ROA 1994; or
- (80) Violations of the City of Albuquerque's Abandoned or Inoperable Vehicle Ordinance, § 8-5-2-0 to § 8-5-2-99 ROA 1994; or

(81) Violations of the City of Albuquerque's Weed and Litter Ordinance, § 9-8-1 to § 9-8-99 ROA 1994; or

(82) 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.

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 §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; and
- (6) Enters into a written Nuisance Abatement Agreement with the City of Albuquerque wherein the property owner agrees to take specific steps including but not limited to providing on-site security or otherwise take 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.

(Ord. 19-2001; Am. Ord. 72-2005)

§ 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, including but not limited to landlord training, tenant background checks and screening, improvements to the property, including general repairs which will bring the property into compliance with City Housing Code, § 14-3-1 et seq., ROA 1994, City Zoning Code, § 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 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.

(Ord. 19-2001)

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) 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.

(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.

(Ord. 19-2001)

§ 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.

(1) At least ten (10) calendar days before filing a civil action under this ordinance involving any seizure, closure, or receivership of real property, 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.

(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, 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.

(J) Whenever a civil action is filed pursuant to § 11-1-1-21(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(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 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. 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, 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 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 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 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 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 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) 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.

(11) The relocation agency shall provide assistance in finding alternative housing for residents who are displaced and qualify for relocation assistance under Ordinance 21-2007.

(12) 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.

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

(Ord. 19-2001; Am. Ord. 21-2007)

§ 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.

(Ord. 19-2001)

§ 11-1-1-23 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.

(Ord. 19-2001)

§ 11-1-1-24 TEMPORARY RESTRAINING ORDERS; PUBLIC NUISANCES.

(A) Seizure of vehicles and other personal property not within buildings, and restraining orders to persons concerning real property, vehicles, other personal property and public nuisances. The city shall 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) 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) 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) Persons 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) The Mayor's designee or any police officer to take reasonable steps to abate the nuisance activity and prevent it from recurring.

(7) To require certain named individuals to stay at least 200 yards away from the property at all times.

(8) 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 of real property and vehicles and other personal property within buildings. In addition to the orders above, the city shall petition the court to include in the temporary restraining order the following orders with respect to the seizure 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) 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 petition the court to permit these persons 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.

(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.

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

(Ord. 19-2001)

§ 11-1-1-25 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.

(Ord. 19-2001)

§ 11-1-1-26 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 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 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 public nuisance, the following remedies:

(1) Closure 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. The city may request the court to order the defendants to carry out the destruction of the structures. The city shall 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.

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, when the city so requests, in lieu of closure of real property, the real property be placed into a special receivership 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) Destruction of vehicles. Where the city so requests, in lieu of impoundment of the vehicle, that the vehicle be destroyed.

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

(Ord. 19-2001; Am. Ord. 72-2005)

§ 11-1-1-27 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.

(Ord. 19-2001)

§ 11-1-1-28 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.

(Ord. 19-2001)

§ 11-1-1-29 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.

(Ord. 19-2001)

§ 11-1-1-30 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.

(5) Reduction or waiver of civil judgments and liens.

(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.

(Ord. 19-2001)

§ 11-1-1-31 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.

(Ord. 19-2001)

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."

(Ord. 36-2004)

§ 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.

(Ord. 36-2004)

§ 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 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 firm that is certified by the Albuquerque Police Department and the City Environmental Health Department to conduct 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.

(Ord. 36-2004)

§ 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.

(Ord. 36-2004)

§ 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 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 and neither the city, the industrial or environmental hygienist firm nor the drug laboratory site remediation firm shall 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.

(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.

(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.

(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.

(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 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.

(Ord. 36-2004)

§ 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 ROA 1994.

(Ord. 36-2004)

PART 2: DRUG FREE ZONES

§ 11-1-2-1 INTENT.

The public purpose of §§ 11-1-2-1 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.

(Ord. 3-1996)

§ 11-1-2-2 SHORT TITLE.

Sections 11-1-2-1 et seq. may be cited as the “Drug Free Zone Ordinance.”

(Ord. 3-1996)

§ 11-1-2-3 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.

(Ord. 3-1996)

§ 11-1-2-4 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.

(Ord. 3-1996)

§ 11-1-2-5 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.

(Ord. 3-1996)

§ 11-1-2-6 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.

(Ord. 3-1996)

§ 11-1-2-7 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.

(Ord. 3-1996)

§ 11-1-2-8 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.

(Ord. 3-1996)

§ 11-1-2-9 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) Variances 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.

(Ord. 3-1996)

§ 11-1-2-10 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.

(C) 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.

(Ord. 3-1996; Am. Ord. 16-1996)

§ 11-1-2-11 REVIEW BY MAYOR.

The effectiveness of §§ 11-1-2-1 et seq. shall be reviewed by the Mayor during the last quarter of 1996 and if it is found to be effective in meeting the intent of §§ 11-1-2-1 et seq., the Council may vote to make §§ 11-1-2-1 et seq. permanent.

(Ord. 3-1996)

§ 11-1-2-12 SEVERABILITY.

If any section, paragraph, sentence, clause, word or phrase of §§ 11-1-2-1 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 §§ 11-1-2-1 et seq. The Council hereby declares that it would have passed §§ 11-1-2-1 et seq. and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

(Ord. 3-1996)