



City of Las Cruces[®]

Housing Policy Review Committee Agenda

The following is the agenda for the City of Las Cruces Housing Policy Review Committee for Wednesday April 20, 2022 at 2:00 p.m., at City Hall, 700 N Main, Las Cruces, New Mexico Conference Room 2007-A. For those that would like to attend virtually, the meeting may be accessed using the following Zoom link: <https://us06web.zoom.us/j/85070067418?pwd=TWU5TG5pWkJqckU1Z2xsaGRWTnA2QT09>

1. Call To Order
2. Conflict Of Interest
3. Acceptance Of Agenda
4. Approval Of Minutes
 - a. March 16, 2022

Documents:

[03-16-22 HOUSING PRC MINUTES.PDF](#)

5. Action Items
 - a. Uniform Housing Code and Nuisance Abatement Ordinance

Documents:

[CLC UHC 3.22.22.PDF](#)
[CLC NUISANCE ABATEMENT 3.22.22.PDF](#)

6. Agency Spotlights - None
7. General Discussion - None
8. Future Items For Review
9. Adjournment

If an accommodation for a person with a disability is required to enable them to fully participate in this event, please contact us 72 hours before the event at 575-528-3043/v or 1-800-659-8331/tty.

The City of Las Cruces does not discriminate on the basis of race, color, national origin, sex, sexual orientation, gender identity, religion, age or disability in employment or the provision of

services.

Date posted: 4/8/22



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The following are summary minutes for the meeting of the **City of Las Cruces – Housing Policy Review Committee** on March 16, 2022. The meeting was held via Zoom and in Room 2007A at City Hall, 700 N. Main Street, Las Cruces, New Mexico.

Members Present:

- Kasandra Gandara, City Council
- Johana Bencomo, City Council
- Yvonne Flores, City Council
- Benjamin Beard, Las Cruces Home Builders Association

Members Absent:

- Sonja Unrau, NM Mortgage Finance Authority
- Juan Olvera, Mesilla Valley Public Housing Authority

Others Present:

- Natalie Green, Housing Neighborhood Service Manager
- Jan Lauterbach, Housing Development Coordinator
- Kevin Wilson, Housing Development Coordinator
- Rene Romo
- Elizabeth Teeters, Economic Development Director
- Sergio Ruiz, Policy Analyst
- Gerard Anaya, Police
- Paris Rubio
- Nicole Martinez, Director, Mesilla Valley Community of Hope
- Christine Rivera, City Clerk
- Eric Enriquez, Assistant City Manager
- Greg Shervanick:
- Becky Baum, RC Creations, Transcription

- 1. Call to Order:** Councilor Bencomo called the meeting to order at 2:10.
- 2. Conflict of Interest:** No conflict of interest was proclaimed.
- 3. Acceptance of the Agenda:** Motion to accept the agenda by Councilor Gandara, seconded by Councilor Flores. Motion passes.
- 4. Minutes for Approval:**
 - a. Housing PRC Meeting of January 19, 2022:** Motion to accept the Minutes by Councilor Gandara, seconded by Councilor Bencomo. Motion passes. Councilor Flores abstained.
- 5. Action Items:**

1 **a. Uniform Housing Code and Nuisance Abatement Ordinance:** Tabled to
2 another meeting. The Board needs Legal present in order to discuss it.
3

4 **6. Agency Spotlights:** Rene Romo stated that the latest message they have about
5 directions of congressionally directed spending for the next round is that it will be
6 a slightly evolving situation as further instruction from Senate leaders comes in.
7 He is happy to send the information to any nonprofits or those who need it.
8 Announcements were made of wins for the community which were for several
9 projects in Doña Ana County. Some projects included was \$1.5 million for the
10 Doña Ana County emergency operations center and \$350,000 for the rapid DNA
11 program for the Sheriff's office. He suggested the Board consider submitting a
12 request for some earmarked related to housing. Mr. Romo doesn't have concrete
13 ideas but Natalie Green and her team have many projects; money can be put in
14 for engineering, construction, land acquisition, and etcetera.
15

16 **7. General Discussion:**
17

18 **8. Future Items for Review:** Councilor Bencomo stated that she and Ms. Green
19 planned out a draft for the next few months' worth of meetings. April would
20 continue to discuss the income discrimination and mitigation fund and finalize for
21 voting in May. The form of how someone pays rent shouldn't be discriminated
22 against. Other future topics of discussion include infill zone for affordable housing
23 especially as it relates to fees and incentives for developers, electrification for low
24 to moderate income households. There was discussion on the infill being
25 affordable/attainable housing or the City purchasing or leasing land from the BLM
26 or the state. Currently the discussion on affordable housing is directly related to
27 how to incentivize developers. Additional conversation on funding sources and
28 land acquisition can be added to the list.
29

30 There are many agencies that have dived into housing or have done substantial
31 changes in their programing. Ms. Green would like to have them come and give
32 updates for the future agency spotlights, specifically FYI Plus and El Calvario.
33 Other potential agency spotlights include developers involved in the upcoming
34 developments. Nicole Martinez gave an update on HUD; the Continuum of Care
35 grant awards were released yesterday. Community of Hope and other nonprofits
36 have secured \$1,019,634 for housing; all projects were renewed with a few at a
37 higher rate. The Desert Hope project was also approved for a sustainable position
38 on the property. Ms. Martinez read what she had said at the public comment
39 meeting for supporting the GO Bond.
40

41 The dates on the GO Bond meetings are March 16th at 6:00 pm at Doña Ana
42 Community College. There will be a break between meetings to account for spring
43 break. Mr. Romo asked Ms. Martinez to e-mail him her statement; she will. The
44 other dates of the GO Bond meetings are March 19th at 9:30 am at Brannigan
45 Cultural Center, March 31st at 12:00 pm and at 6:00 pm at the Council chambers,
46 April 5th at 12:00 pm and 6:00 pm at the Frank O'Brien Papen Community Center,
47 April 12th at 5:30 pm at Sage Café, April 19th at 5:30 pm at Las Cruces Utilities
48 Center Boardroom on 680 N. Motel, and April 7th at 6:00 pm.

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9. Adjournment: Motion to adjourn the meeting by Councilor Gandara, seconded by Councilor Flores. The meeting adjourned at approximately 3:37 p.m.

Chairperson

Approved: _____

DRAFT

Article 1.1

30-3 Short title

30-4 Purpose

30-5 Scope

30-6 Definitions

DIVISION I: GENERAL PROVISIONS

§ 30-3 SHORT TITLE.

This article shall be known as the "Uniform Housing Code," may be cited as such, and will be referred to herein as "this code."

§ 30-4 PURPOSE.

The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the occupancy level and maintenance of all residential and non-residential buildings and structures within this jurisdiction.

§ 30-5 SCOPE.

(A) Application.

(1) The provisions of this code shall apply to all buildings or portions thereof used or designed to be used or intended to be used for human habitation. Such occupancies in existing buildings may be continued as provided in §§30-136 and 30-721, except such structures as are found to be substandard as defined in this code.

(2) Where any building or portion thereof is used, or intended to be used as a combination apartment house-hotel, the provisions of this code shall apply to the separate portions as if they were separate buildings.

(3) Every rooming house shall comply with all the requirements of this code for dwellings.

(B) Alteration. Existing buildings which are altered, enlarged or repaired shall be made to conform to this code insofar as the new work is concerned and in accordance with §§30-136 and 30-721.

(C) Relocation. Residential buildings or structures moved into or within this jurisdiction shall comply with the requirements of this code and all LCMC Building Codes, including §§30-136 and 30-721.

§ 30-6 DEFINITIONS.

For the purpose of this code, certain terms, phrases, words and their derivatives shall be construed as specified in either this chapter and article or as specified in the LCMC Building Codes, including §§30-136 and 30-721. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. Words in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the masculine. All citations and references to other codes, ordinances, statutes or regulations thereto shall be construed to include any amendments or modifications thereof.

APARTMENT HOUSE. An apartment house is any building or portion thereof which contains three or more dwelling units.

APPROVED. Approved, as to materials, types of construction, equipment and systems, refers to approval by the Building Official as the result of investigation and tests conducted by him/her, or by reason of accepted principles or tests by recognized authorities or scientific organizations.

BUILDING CODE. Building Code is the Uniform Building Code promulgated by the International Code Council (ICC), as adopted by this jurisdiction

DEPARTMENT. The department is the Community Development Department, or the Department that may be subsequently charged with the responsibility of the enforcement of this code.

DIRECTOR. The Director is the legally designated head of the Department that may be subsequently charged with the responsibility of the enforcement of this code.

DWELLING. A dwelling is any building or portion thereof which contains not more than two dwelling units.

DWELLING UNIT. A dwelling unit is any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by this code, for not more than one family.

EFFICIENCY DWELLING UNIT. Efficiency dwelling unit is a dwelling unit containing only one habitable room and meeting the requirements of LCMC Building Codes, including §§30-136 and 30-721.

HABITABLE SPACE (ROOM). Habitable space is a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas are not considered habitable space.

HEALTH OFFICER. Health Officer is the legally designated head of the Environmental Health Department of this jurisdiction or his designated representative.

HOTEL. A hotel is any building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.

HOT WATER. Hot water is hot water supplied to plumbing fixtures at a temperature of not less than 110° F.

INSPECTOR. The inspector is the Building and/or Housing Inspector or any subsequently titled position, including Las Cruces Code Enforcement, charged with the responsibility of making inspections to enforce the provisions of the Housing Code adopted by this jurisdiction.

MAYOR. The Mayor or his designated representative.

MECHANICAL CODE. Mechanical code is the International Association of Plumbing and Mechanical Officials, as adopted by this jurisdiction.

MOTEL. A motel shall mean hotel as defined in this code.

NUISANCE. The following shall be defined as nuisances:

- (1) Any nuisance known at common law or in equity jurisprudence.
- (2) Any attractive nuisance which may prove detrimental to children whether in a building, on the premises of a building, or upon an unoccupied lot. This includes any:
 - (a) abandoned wells, shafts, basements or excavations;
 - (b) abandoned large appliances;
 - (c) structurally unsound fences or structures;
 - (d) lumber, trash, fences or debris;
 - (e) abandoned or partially destroyed vehicles;
 - (f) pooled oil accumulation;
 - (g) ponds or pools of stagnant water;
 - (h) all diseased animals running at large;
 - (i) carcasses of animals not buried or destroyed within 24 hours after death;
 - (j) exposed accumulation of decayed or unwholesome food or vegetable matter;
 - (k) accumulations of manure, refuse or other debris; and
 - (l) privy vaults and garbage cans which are not rodent free or fly-tight or which are so maintained as to constitute a health hazard or to emit foul or disagreeable odors.
- (3) Whatever is dangerous to human life or is detrimental to health, as determined by the health officer.
- (4) Overcrowding a room with occupants.
- (5) Insufficient ventilation or illumination.
- (6) Inadequate or unsanitary sewage or plumbing facilities.
- (7) Any violation of the housing standards and licensing requirements set forth in this code.

(8) Any violation of Chapter 18, et. seq.

(9) Any violation of Chapter 11, et. seq., that is deemed to present a threat or danger to public safety by the Fire Marshall or Fire Chief.

RELOCATION AGENCY. Community Development or Housing Authority or agency designated by the City.

RELOCATION COSTS.

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

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

RESIDENTIAL BUILDING. A residential building is a building or portion thereof designed or used for human habitation.

ROOMING HOUSE. Rooming house is any building or portion thereof, containing not more than five guest rooms, which are used by not more than five guests where rent is paid in money, goods, labor or otherwise. A rooming house shall comply with all the requirements for this code for dwellings.

STRUCTURE. A structure is that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

SUPERFICIAL FLOOR AREA. Superficial floor area is the floor area that is obviously or apparently used for habitable space.

VACANT BUILDING. A dwelling, dwelling unit, efficiency dwelling unit, habitable space, residential building, or structure lacking the continuous habitual presence of human beings who have a legal right to be on the premises for a period of 90 days or longer but excluding property under a listing agreement with a real estate agent licensed in New Mexico.

DIVISION 2: SPACE AND OCCUPANCY STANDARDS

§ 30-6 ROOM DIMENSIONS.

(A) Ceiling Heights.

(1) Habitable space shall have a ceiling height of not less than seven (7) feet, except as otherwise permitted in LCMC Building Codes, including §§30-136 and 30-721. Kitchens, halls, bathrooms and toilet compartments shall have a ceiling height of not less than 7 feet measured to the lowest part of the ceiling. Where exposed beam ceiling members are spaced at less than 48 inches on center, ceiling height shall be measured to the bottom of these members. Where exposed beam ceiling members are spaced at 48 inches on center, ceiling height shall be measured to the bottom of the deck supported by these members, provided that the bottom of the members is not less than 7 feet above the floor.

(2) If any room in the building has a sloping ceiling, the prescribed ceiling height for the room is required in only one-half the area thereof. No portion of the room measuring less than 5 feet from the finished floor to the finished ceiling shall be included in any computation of the minimum area thereof.

(3) If any room has a furred ceiling, the prescribed ceiling height is required in two-thirds the area thereof, but in no case shall the height of the furred ceiling be less than 7 feet.

(B) *Floor Space.*

(1) Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof, the floor space to be calculated on the basis of total habitable room area.

(2) In every dwelling unit of two or more rooms, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space, and every room occupied for sleeping purposes by more than one occupant shall contain at least 45 square feet of floor space for each occupant thereof.

(C) *Width.*

(1) No habitable room other than a kitchen shall be less than 7 feet in any dimension. Kitchens shall have a clear passageway of not less than three (3) feet (914 mm) between counter fronts and appliances or counter fronts and walls.

(2) Each water closet stool shall be located in a clear space not less than 30 inches in width and clear space in front of the water closet stool of not less than 24 inches shall be provided.

(D) *Exception.* Nothing in this Chapter shall prohibit the use of an efficiency living unit within an apartment house meeting the following requirements:

(1) The unit shall have a living room of not less than 220 square feet of superficial floor area. An additional 100 square feet of superficial floor area shall be provided for each occupant of such unit in excess of two.

(2) The unit shall be provided with a separate closet.

(3) The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches in front. Light and ventilation conforming to this code shall be provided.

(4) The unit shall be provided with separate bathroom containing a water closet, lavatory and bathtub or shower.

§ 30-7 LIGHT AND VENTILATION.

(A) *Natural Light and Ventilation.*

(1) All guest rooms, dormitories and habitable rooms within a dwelling unit shall be provided with natural light by means of exterior glazed openings with an area not less than one tenth of the floor area of such rooms with a minimum of 10 square feet. All bathrooms, water closet compartments, laundry rooms and similar rooms shall be provided with natural ventilation by means of operable exterior openings with an area not less than 1/20 of the floor area of such rooms with a minimum of 1½ square feet.

(2) All guest rooms, dormitories and habitable rooms within a dwelling unit shall be provided with natural ventilation by means of operable exterior openings with an area of not less than 1/20 of the floor area of such rooms with a minimum of 5 square feet.

(B) *Origin of Light and Ventilation.*

(1) Required exterior openings for natural light and ventilation shall open directly onto a street or public alley or a yard or court located on the same lot as the building.

(2) Exception.

(a) Required windows may open into a roofed porch where the porch:

- i. Abuts a street, yard, or court;
- ii. Has a ceiling height of not less than 7 feet; and
- iii. Has the longer side at least 65 percent open and unobstructed.

(b) A required window in a service room may open into a vent shaft which is open and unobstructed to the sky and not less than 4 feet in least dimension. No vent shaft shall extend through more than two stories.

(3) For the purpose of determining light and ventilation requirements, any room may be considered as a portion of an adjoining room when one half of the area of the common wall is open and unobstructed and provides an opening of not less than one tenth of the floor area of the interior room or 25 square feet, whichever is greater.

(C) *Mechanical Ventilation.* In lieu of required exterior openings for natural ventilation, a mechanical ventilation system may be provided in all guest rooms, dormitories, habitable rooms and public corridors. In bathrooms, water closet compartments, laundry rooms and similar rooms a mechanical ventilation system connected directly to the outside shall be provided.

(D) *Hallways.* All public hallways, stairs and other exit ways shall be illuminated at any time the building is occupied with light having intensity of not less than 1 foot candle at floor level. Exit signs where required must be in accordance with LCMC Building Codes, including §§30-136 and 30-721.

§ 30-8 SANITATION.

(A) *Dwelling Units.* Every dwelling unit shall be provided with a bathroom equipped with facilities consisting of a water closet, lavatory and either a bathtub or shower.

(B) *Kitchen.* Each dwelling unit shall be provided with a kitchen. Every kitchen shall be provided with a kitchen sink. Wooden sinks or sinks of similarly absorbent material shall not be permitted.

(C) *Fixtures.*

(1) All plumbing fixtures shall be connected to a sanitary sewer or to an approved private sewage disposal system. All plumbing fixtures shall be connected to an approved system of water supply and provided with hot and cold running water necessary for its normal operation.

(2) All plumbing fixtures shall be of an approved glazed earthenware type or of a similarly nonabsorbent material.

(D) *Water Closet Compartments.* Water closet compartments in dwellings shall be finished with approved nonabsorbent materials. Bathroom floor surface shall be maintained to be reasonably impervious to water.

(E) *Bathroom or Shower Accessories.* All accessories such as grab bars, towel bars, paper dispensers and soap dishes and the like, provided on or within walls, shall be installed and sealed to protect structural elements from moisture.

(F) *Showers.* Showers in all occupancies shall be finished to a height of not less than 70 inches above the drain inlet. Materials other than structural elements used in such walls shall be of a type which is not adversely affected by moisture.

(G) *Room Separations.* Every water closet, bathtub or shower required by this code shall be installed in a room which will afford privacy to the occupant. A room in which a water closet is located shall be separated from food preparation or storage rooms by a tight-fitting door.

(H) *Installation and Maintenance.* All sanitary facilities shall be installed and maintained in a safe and sanitary condition and in accordance with all applicable laws.

DIVISION 3: GENERAL REQUIREMENTS

§ 30-9 STRUCTURAL REQUIREMENTS.

(A) *General.* Buildings or structures may be of any type of construction permitted by the Building Code. Roofs, floors, walls, foundations and all other structural components of buildings shall be capable of resisting any and all forces and loads to which they may be subjected. All structural elements shall be proportioned and joined in accordance with the stress limitations and design criteria as specified in the appropriate sections of the Building Code. Buildings of every permitted type of construction shall comply with the applicable requirements of the Building Code.

(B) *Shelter.* Every building shall be weather protected to provide shelter for the occupants against the elements and to exclude dampness.

(C) *Protection of Materials.* All wood shall be protected against termite damage and decay as provided in the Building Code.

§ 30-10 MECHANICAL REQUIREMENTS.

(A) *Heating and Ventilation.*

(1) Heating.

(a) Every dwelling unit and guest room shall be provided with heating facilities capable of maintaining a room temperature of 68° F. at a point 3 feet above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with §§30-136 and 30-721 of the LCMC Building Code, and all other applicable laws.

(b) Unvented fuel-burning heaters shall not be permitted. All heating devices or appliances shall be of an approved type, and installed per the manufacturers specifications.

(2) Electrical Equipment.

(a) All electrical equipment, wiring and appliances shall be installed and maintained in a safe manner in accordance with all applicable laws. All electrical equipment shall be of an approved type.

(b) Every habitable room shall contain at least two supplied electric convenience outlets or one such convenience outlet and one supplied electric light fixture. Every water closet compartment, bathroom, laundry room, furnace room and public hallway shall contain at least one supplied electric light fixture.

(3) Ventilation. Ventilation for rooms and areas and for fuel-burning appliances shall be provided as required in the Mechanical Code and in this code. Where mechanical ventilation is provided in lieu of the natural ventilation required by LCMC Building Codes, including §§30-136 and 30-721 such mechanical ventilating system shall be maintained in operation during the occupancy of any building or portion thereof.

§ 30-11 EXITS.

(A) *General.*

(1) Every dwelling unit or guest room shall have access directly to the outside or to a public corridor.

(2) All buildings or portions thereof shall be provided with exits, exit ways and appurtenances as required by LCMC Building Codes, including §§30-136 and 30-721.

(3) Every sleeping room below the fourth story shall have at least one operable window or exterior door approved for emergency escape or rescue. The units shall be operable from the inside to provide a full clear opening without the use of separate tools.

(4) All escape or rescue windows from sleeping rooms shall have a minimum net clear opening of 5.7 square feet. The minimum net clear opening height dimension shall be 24 inches. The minimum net clear opening width dimension shall be 20 inches. Where windows are provided as a means of egress or rescue they shall have a finished sill height not more than 44 inches above the floor.

§ 30-12 FIRE PROTECTION.

All buildings or portions thereof shall be provided with the degree of fire-resistive construction as required by City Code, LCMC Building Codes, including §§30-136 and 30-721 for the appropriate occupancy, type of construction and location on property; and shall be provided with the appropriate fire-extinguishing systems or equipment required by the chief of the fire department or his deputy.

DIVISION 4: SUBSTANDARD BUILDINGS

§ 30-13 SUBSTANDARD BUILDING DEFINED.

Any building or portion thereof, including any dwelling unit, guest room or suite of rooms, or the premises on which the same is located, in which there exists any of the following listed conditions set forth in this code or LCMC Building Codes, including §§30-136 and 30-721, to an extent that endangers the life, limb, health, property, safety or welfare of the public or the occupants thereof shall be deemed and declared a ***SUBSTANDARD BUILDING***.

§ 30-13.1 INADEQUATE SANITATION.

INADEQUATE SANITATION shall include but not be limited to the following:

- (A) Lack of, or not properly operative water closet, lavatory, bathtub or shower in a dwelling unit.
- (B) Lack of, or not properly operative water closets, lavatories and bathtubs or showers in a motel.
- (C) Lack of, or not properly operative kitchen sink.
- (D) Lack of hot and cold running water to plumbing fixtures in a motel.
- (E) Lack of hot and cold running water to plumbing fixtures in a dwelling unit.
- (F) Lack of adequate heating facilities.
- (G) Lack of, or improper operation of required ventilating equipment.
- (H) Lack of minimum amounts of natural light and ventilation required by this code.
- (I) Room and space dimensions less than required by this code.
- (J) Lack of required electrical lighting.
- (K) Dampness of habitable rooms because of faulty weather protection.
- (L) General dilapidation or inadequate maintenance.
- (M) Lack of connection to required sewage disposal system.

(N) Infestation of insects, vermin or rodents as set forth in Chapter 18 of this code.

§ 30-13.2 STRUCTURAL HAZARDS.

STRUCTURAL HAZARDS shall include but not be limited to the following:

- (A) Deteriorated or inadequate foundations.
- (B) Defective or deteriorated flooring or floor supports.
- (C) Flooring or floor supports of insufficient size to carry imposed loads with safety.
- (D) Members of walls, partitions or other vertical supports that spilt, lean, list or buckle.
- (E) Members of walls, partitions or other vertical supports that are of insufficient size to carry imposed loads with safety.
- (F) Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split or buckle.
- (G) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety.
- (H) Fireplaces or chimneys which list, bulge or settle.
- (I) Fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety.
- (J) Every inside and outside stair, every porch, and every appurtenance thereto shall be safe to use and capable of supporting the load that normal use may cause to be placed thereon.
- (K) Every interior wall and ceiling is free of holes and large cracks. Every interior wall and ceiling is free of loose plaster and other structural material, the collapse of which might constitute an accident hazard. Plaster, paint, and all other surface materials are of such character as to be easily cleanable and are reasonably smooth, clean, and tight.

§ 30-13.3 NUISANCE.

A **NUISANCE** shall include:

- (A) Unlicensed vacant buildings;
- (B) Buildings that have broken windows or doors constituting hazardous conditions and inviting trespassers or malicious mischief;
- (C) Buildings that are Commissioned up, partially destroyed, not properly secured or partially constructed or incomplete after the building permit authorizing its construction has expired;
- (D) Buildings whose maintenance is so out of harmony and conformity with the maintenance and quality of adjacent or nearby properties as to cause substantial diminution in the enjoyment, use or property value of such adjacent or nearby properties; and

- (E) Buildings in an unsecured state that are not securely fenced or adequately lighted to prevent access to trespassers, criminals or others unauthorized to enter for the purpose of committing a nuisance or unlawful act or that constitutes an attractive nuisance for children.

§ 30-14.4 HAZARDOUS WIRING.

HAZARDOUS WIRING shall include all wiring except that which conformed with all applicable laws in effect at the time of installation and which has been maintained in good condition and is being used in a safe manner.

§ 30-14.5 HAZARDOUS PLUMBING.

HAZARDOUS PLUMBING shall include all plumbing except that which conformed with all applicable laws in effect at the time of installation and which has been maintained in good condition and which is free of cross-connections and siphon between fixtures.

§ 30-14.6 HAZARDOUS MECHANICAL EQUIPMENT.

HAZARDOUS MECHANICAL EQUIPMENT shall include all mechanical equipment, including vents, except that conformed with all applicable laws in effect at the time of installation and which has been maintained in a good and safe condition.

§ 30-14.7 FAULTY WEATHER PROTECTION.

FAULTY WEATHER PROTECTION shall include but not be limited to the following:

- (A) Deteriorated or ineffective waterproofing of exterior walls, roof, foundations or floors, including broken windows, doors and basement hatchways.
- (B) Defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other approved protective covering.
- (C) Broken, rotted, split or buckled exterior wall coverings or roof coverings.

§ 30-13.8 FIRE HAZARD.

A **FIRE HAZARD** shall include any building or portion thereof, device, apparatus, equipment, combustible waste or vegetation which, in the opinion of the Chief of the Fire Department or his deputy, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause.

§ 30-13.9 FAULTY MATERIALS OF CONSTRUCTION.

FAULTY MATERIALS OF CONSTRUCTIONS shall include all materials of construction except those which are specifically allowed or approved by this code and the Building Code, and which have been adequately maintained in good and safe condition.

§ 30-13.10 INADEQUATE MAINTENANCE.

INADEQUATE MAINTENANCE shall include any building or portion thereof which is determined to be an unsafe building in accordance with LCMC Building Codes, including §§30-136 and 30-721.

§ 30-13.11 INADEQUATE EXITS.

- (A) **INADEQUATE EXITS** shall include all buildings or portions thereof not provided with adequate exit facilities as required by this code except those buildings or portions thereof whose exit facilities conformed with all applicable laws at the time of their construction and which have been adequately maintained and increased in relation to any increase in occupant load, alteration or addition, or any change in occupancy.
- (B) When an unsafe condition exists through lack of, or improper location of exits, additional exits may be required to be installed.

§ 30-13.12 INADEQUATE FIRE-PROTECTION OR FIREFIGHTING EQUIPMENT.

INADEQUATE FIRE-PROTECTION or **FIREFIGHTING EQUIPMENT** shall include all buildings or portions thereof which are not provided with the fire-resistive construction or fire-extinguishing systems or equipment required by this code and the Chief of the Fire Department, except those buildings or portions thereof which conformed with all applicable laws at the time of their construction and whose fire-resistive integrity and fire-extinguishing systems or equipment have been adequately maintained and improved in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

DIVISION 5: ADMINISTRATION AND ENFORCEMENT

§ 30-14 ENFORCEMENT.

The City Manager, or her/his designee, is hereby authorized and directed to enforce all of the provisions of this code. For such purposes, she/he shall have all the powers specified herein.

§ 30-14.1 NOTICES AND ORDERS OF THE CITY MANAGER.

- (A) *General.*
- (1) **Commencement of Proceedings.** Whenever the City Manager has inspected or caused to be inspected any building and has found and determined that such building is a substandard building, they shall commence proceedings to cause the repair, rehabilitation, vacation, demolition or securing of the building.
- (2) **Notice and Order.** The City Manager shall issue a notice and order directed to the owner of the building as indicated by the county assessor's records and where appropriate the occupant of the building. The notice and order shall contain:
- (a) The street address and a legal description sufficient for identification of the premises upon which the building is located.
- (b) A statement that the City Manager has found the building to be substandard with a brief and concise description of the conditions found to render the building dangerous under the provisions of this code.

(c) A statement of the action required to be taken as determined by the City Manager.

i. If the City Manager has determined that the building or structure must be repaired, the order shall provide that all required permits be secured therefor and the work physically commenced within such time, not to exceed 30 days from the date of the order, and completed within such time as the City Manager shall determine is reasonable under all the circumstances.

ii. If the City Manager has determined that the building or structure must be vacated, the order shall require that the building or structure shall be vacated within a certain time from the date of the order as determined by the City Manager to be reasonable.

iii. If the City Manager has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the City Manager shall determine reasonable, not to exceed 30 days from the date of the order; that all required permits be secured therefor within 60 days from the date of the order, and that the demolition be completed within such time as the City Manager shall determine is reasonable. Failure to comply with the order to demolish the building or structure within such time as the City Manager shall determine reasonable, not to exceed 30 days from the date of the order, will result in a Resolution of Condemnation being presented to the Governing Body on a specified date pursuant to NMSA 1978 §3-18-5.

iv. If the City Manager has determined that the building or structure is a nuisance or an attractive nuisance; the order shall require the nuisance to be abated within such time the City Manager shall determine to be reasonable, not to exceed 30 days from the date of the order; where there has been a failure to comply with such order the City Manager shall proceed to obtain an appropriate court order to abate such nuisance. Any such abatement of the nuisance shall be accomplished and the cost thereof paid and recovered in the manner provided by this code.

(d) Statements advising:

i. That any person having any title or legal interest in the building may appeal from the notice and order or any action of the City Manager, excluding demolition, to the CITY COUNCIL, provided the appeal is made in writing as provided in this code, and filed with the City Clerk prior to the effective date of the order;

ii. That in the case of demolition the appeal procedure shall be as set forth in Section 3-18-5 NMSA 1978.

(3) Method of Service in Cases Other than Demolition.

(a) Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage

prepaid, return receipt requested, to each such person at his address as it appears on the last assessment roll of the county or as known to the City Manager. If no address of any such person so appears or is known to the City Manager, then a copy of the notice and order shall be so mailed, addressed to such person, at the address of the building involved in the proceedings and posted thereon.

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

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

(B) Recordation of Notice and Order.

(1) If compliance is not had with the order within the time specified therein, and no appeal has been properly and timely filed, the City Manager shall file in the office of the County Clerk a certificate describing the property and certifying:

(a) That the building is a substandard building; and

(b) That the owner has been so notified.

(2) Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as a substandard building on the property described in the certificate, the City Manager shall file a new certificate with the County Clerk certifying that the building has been demolished or all required corrections have been made so that the building is no longer substandard, whichever is appropriate.

(C) Repair, Vacation, Securing or Demolition.

(1) **Standards to be Followed.** The following standards shall be followed by the City Manager (and by **the City Council**) in ordering the repair, vacation, demolition or securing of any substandard building or structure:

(a) If any building is declared a substandard building under this code it shall either be repaired in accordance with the current Building and Housing Codes or shall be demolished at the option of the building owner.

(b) If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or of the occupants, it shall be ordered to be vacated.

(c) If the building or structure is open and determined to be an attractive nuisance and/or nuisance, a court order to secure the building or structure will be obtained as provided herein.

(D) *Notice to Vacate.*

(1) Posting. Every notice to vacate shall, in addition to being served, be posted at or upon each exit of the building, and shall be in substantially the following form:

**DO NOT ENTER
SUBSTANDARD BUILDING
UNSAFE TO OCCUPY**

It is a misdemeanor to occupy this building, or to remove or deface this notice.

Director of Community Development
City of Las Cruces

(2) Compliance. Whenever such notice is posted, the City Manager shall include a notification thereof in the notice and order issued by him reciting the emergency and specifying the conditions which necessitate the posting. No person shall remain in or enter any building which has been so posted, except that entry may be made to secure, repair, demolish or remove such building under permit. No person shall remove or deface any such notice after it is posted until the required repairs, demolition, or removal have been completed and a Certificate of Compliance filed with the county clerk. Any person violating this division (D)(2) shall be guilty of a misdemeanor.

§ 30-14.2.

(A) *General.*

(1) Form of Appeal.

(a) Any person entitled to appeal under this code may do so by filing at the office of the City Clerk/City Attorney a written appeal containing:

- i. The names of all appellants participating in the appeal.
- ii. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the appeal.
- iii. A brief statement in ordinary and concise language of that specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
- iv. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.
- v. The signatures of all parties named as appellants and their official mailing addresses.
- vi. The verification, by declaration under penalty of perjury, of at least one appellant as to the truth of the matters stated in the appeal.

- (b) The appeal shall be filed prior to the effective date of the order.
- (2) **Processing of Appeal.** Upon receipt of any appeal filed pursuant to this section, **the City Clerk or his/her designee**, shall present it at the next regular or special meeting of the **City Council**.
- (3) **Scheduling and Noticing Appeal for Hearing.** As soon as practicable after receiving the written appeal, **the City Council** shall fix a date, time and place for the hearing of the appeal by the **Council**. Such date shall be not less than ten days nor more than 60 days from the date the appeal was filed with the City Clerk. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal.
- (4) **Appeal of Governing Body Action.** Any person aggrieved by the finding of the Governing Body that a building, structure or premise is so ruined, damaged and dilapidated that it is such a menace to the public comfort, health, peace or safety so as to require the removal from the municipality of the building, structure, ruins, rubbish, wreckage or debris, may file a written objection with the City Clerk within ten days of the receipt of a copy of the Resolution of Condemnation, asking for a hearing before the Governing Body. After receiving a valid written objection the City Council shall hold a hearing as provided for in Section 3-18-5, NMSA 1978.
- (5) *Effect of Failure to Appeal.* Failure of any person to file an appeal in accordance with the provisions herein shall constitute a waiver of his right to an administrative hearing and adjudication of the notice and order or to any portion thereof.
- (6) *Scope of Hearing Appeal.* Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.
- (7) *Staying of Order Under Appeal.* Enforcement of any notice and order of the City Manager issued under this code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

§ 30-14.3 PROCEDURES FOR CONDUCT OF HEARING APPEALS.

(A) *Form of Notice of Hearing.* The notice to appellant shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before **the Las Cruces City Council** at _____ on the ____ day of _____, 20__, at the hour of _____, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by legal counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you."

(B) *Conduct of Hearings.*

(1) Disclosure. The **City Council** may require that the parties provide, prior to the hearing, a written statement of all issues to be addressed, a list of proposed witnesses, a brief statement of the nature of each witness' testimony, and copies of all documentary evidence to be introduced, which material shall be available for inspection and copying by all parties.

(2) Evidence.

(a) **The Council** shall afford all parties an opportunity to present oral or documentary evidence and argument on all issues involved, except that irrelevant, immaterial and unduly repetitious evidence shall be excluded. It is the policy of the Council that testimony and information presented during the hearing must have a direct and substantial bearing on the case at hand.

(b) **The Council** may impose reasonable limits on the number of witnesses heard and on the nature and length of the testimony or questioning.

(c) Hearsay testimony is admissible subject to the other limitations on admissibility contained in these rules.

(d) **The Council** shall base its decision on evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The decision must be supported by at least some evidence which is admissible in a court of law.

(3) Hearing Procedure.

(a) The **Chairperson of the Council** shall act as the presiding officer at the hearing unless they are unavailable or wish to delegate this duty, in which case, the presiding officer shall be selected in accordance with **Council** procedure. The presiding officer shall:

- i. Determine the admissibility of evidence and testimony;
- ii. Make rulings on procedural issues; and
- iii. Be responsible for **the Council's** written ruling in each case.

(b) Should an action of the presiding officer be challenged by another **Council** member, and should the presiding officer disagree with the challenge, the issue will be decided by a majority vote of the **Council**.

(c) Any interested parties shall be allowed to attend the hearing.

(d) **The Council can** recognize any agreements on facts and issues between the parties or decide that certain facts are not in dispute to define the issues to be heard.

(e) **The Council** may request the clarification of a complaint prior to a hearing; request that certain facts be examined initially to determine whether such facts exist as will support the allegations to be heard or make any other rulings, procedural, limiting, dispositive, or otherwise, which are in accordance with the law as applied to the facts at issue.

- (f) In the absence of the Council's decision to proceed in a different manner, notice of which shall be given to the parties at least three days in advance of the hearing, the sequence of the hearing shall be as follows:
- i. Opening statement of issues. The appellant and then the City Manager or their designee, will present statements of issues involved in the case and outline the case which will be presented.
 - ii. Appellant's presentation of its case. The appellant will first present its case to the Council unless the parties agree otherwise. Witnesses for the appellant will be called, sworn in, and questioned on their involvement in, or knowledge of the case. Following each witness' testimony, the City Manager will have the opportunity to cross-examine the witness. Council members will then have the opportunity to question the witness on matters related to their testimony. Follow-up or redirect questioning will be allowed at the discretion of the presiding officer. This procedure will be followed for each of the Appellant's respective witnesses.
- (g) Presentation of the City Manager's case. This presentation shall follow the same format as presentation of the appellant's case.
- (h) Rebuttal testimony. Following presentations of the Appellant's and City Manager's positions, rebuttal testimony will be allowed at the discretion of the presiding officer. Such testimony should be brief and specifically address the issues brought forth in the previous presentations.
- (i) Closing statements. At the conclusion of the case presentations and rebuttal testimony, the parties will each make his or her closing statements. The closing statements should briefly review the issues presented and the desired outcome. The appellant will then have the opportunity to make a final statement, which shall be limited to issues brought forth in the City Manager's closing statement.
- (j) Decision. All decisions of the Council shall be by majority vote.
- (4) Quorum. A majority of the members of the Council shall constitute a quorum and no business shall be conducted unless there is a quorum present.
- (5) Record. A record of the Council's proceedings shall be kept in the following manner:
- (a) A full record of the hearing by sound recording or by a qualified court reporter which record shall be retained for at least one year after the final decision is issued;
 - (b) All documents or other items considered and received as evidence; and
 - (c) Any decision or opinion of the Council, including findings of fact.

§ 30-14.4 ENFORCEMENT OF THE ORDER OF THE CITY MANAGER OR THE PLANNING AND ZONING COMMISSION.

(A) *Compliance.*

(1) **General.** After any order of the City Manager or the Council made pursuant to this code shall have become final, no person to whom any such order is directed shall fail, neglect, or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a petty misdemeanor.

(2) **Failure to Obey Order.** If, after any order of the City Manager or the Council made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the City Manager may:

- (a) Cause such person to be prosecuted under division (A)(1) above; or
- (b) Institute any appropriate action to abate such nuisance.

(3) **Failure to Commence Work.** Whenever the required repair or demolition is not commenced within 30 days after any final notice and order issued under this code becomes effective, the City Manager shall cause the building described in such notice and order to be vacated by posting at each entrance thereto a notice reading:

DO NOT ENTER
SUBSTANDARD BUILDING

THIS STRUCTURE IS UNSAFE AND ITS OCCUPANCY HAD BEEN PROHIBITED BY THE CODE OFFICIAL

It is a petty misdemeanor to occupy this building, or to remove or deface this notice.

Director of Community Development
City of Las Cruces

(a) No person shall occupy any building which has been posted as specified in this section. No person shall remove or deface any such notice so posted until the repairs, demolition or removal ordered by the City Manager have been completed and a Certificate of Compliance issued pursuant to the provisions of this Housing Code.

(b) The City Manager may, in addition to any other remedy herein provided cause the building to be repaired to the extent necessary to correct the conditions which render the building substandard as set forth in the notice and order; or, if the resolution of the Governing Body requires demolition, to cause the building to be demolished, and the materials, rubble and debris therefrom removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this code or in the manner provided in Section 3-36-1 through 3-36-6 NMSA 1978.

(c) *Extension of Time to Perform Work.* Upon receipt of an application from the person required to conform to the order and an agreement by such person that he will comply with the order if allowed additional time, the City Manager may, at his discretion, grant an extension of time, not to exceed an

additional 120 days, within which to complete said repair, rehabilitation or demolition, if the City Manager determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The City Manager's authority to extend time is limited to the physical repair, rehabilitation or demolition of the premises and will not in any way affect or extend the time to appeal his notice and order.

(d) *Interference with Repair or Demolition Work Prohibited.* No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the city or with any person who owns or holds any estate or interest in any building which has been ordered repaired, vacated, demolished or secured under the provisions of this code, whenever such person is engaged in the work of repairing, vacating and repairing, demolishing or securing any such building pursuant to the provisions of this code, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this code.

§ 30-15 PERFORMANCE OF WORK OR REPAIR, DEMOLITION, OR SECURING BUILDING.

(A) *General.*

(1) Procedure. When any work of repair, demolition or securing of building is to be done pursuant to this code, the City Manager, or his/her designee, shall cause the work to be accomplished by city personnel or by private contract under the direction of the City Manager. Plans and specifications therefor may be prepared by the City Manager, or he may employ such architectural and engineering assistance on a contract basis as he may deem reasonably necessary.

(2) Costs. The cost of such work shall be paid from the repair and demolition fund, and shall be a lien against the property involved, and a personal obligation of the property owner.

§ 30-16 REQUESTED INSPECTIONS; FEE.

(A) The city will inspect dwelling units for violations of this code prior to sale or refinancing of same upon request of the buyer or the owner.

(B) A requested inspection will be made upon payment of a fee of \$50 for the first dwelling unit and \$15 for each additional unit to offset the city's administrative costs including an inspection, inspection report, reinspection and issuance of Certification of Compliance with this code.

§ 30-17 RIGHT OF ENTRY.

(A) Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the City Manager has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building or premises unsafe, dangerous or hazardous, the City Manager may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the City Manager by this code, provided that if such building or premises be occupied, he/she shall first present proper credentials and request entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the City Manager shall proceed to obtain a

search warrant or other appropriate legal authorization by filing a verified petition with the District Court. The petition shall:

- (1) Set forth the particular building, premises or portion thereof sought to be inspected;
 - (2) State that the owner or occupant of the building, premises or portion thereof, has refused entry, or cannot be located in order to obtain right of entry;
 - (3) State that inspection of the building, premises or portion thereof is necessary to determine whether it complies with the requirements of this code;
 - (4) Set forth the particular provisions of this code sought to be enforced;
 - (5) Set forth any other reason necessitating the inspection, including knowledge or belief that a particular condition exists in the building, premises or portion thereof which constitutes a violation of this code;
 - (6) State that the City Manager is authorized by the city to make the inspection.
- (B) When the City Manager shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the City Manager for the purpose of inspection and examination pursuant to this code.

§ 30-18 IDENTIFICATION.

Each inspector shall be furnished with an identification card signed by the City Manager or Chief of Police indicating his authority and must present same to other persons, during the performance of his duty.

§ 30-19 RESPONSIBILITIES OF OWNERS.

- (A) Every owner remains liable for violations of duties imposed upon him by this code even though an obligation is also imposed on the occupants of his building, and even though the owner has, by agreement, imposed on the occupant the duty of furnishing required equipment or of complying with this code.
- (B) Every owner, or his agent, in addition to being responsible for maintaining his building in a sound structural condition, shall be responsible for keeping that part of the building or premises which he occupies or controls in a clean, sanitary and safe condition, including the shared or public areas in a building or on the premises containing two or more dwelling units.

§ 30-20 SUBSTANDARD BUILDINGS.

All buildings or portions thereof which are determined to be substandard as defined in this code are hereby declared to be nuisances and shall be abated by repair, rehabilitation, demolition, removal or securing all accessible openings and entrances to building in accordance with the procedure as provided herein.

Any building that has been determined to be substandard and which has been abated by securing all accessible openings and entrances shall be repaired, rehabilitated, demolished or removed within 12 months of being secured. The failure to repair, rehabilitate, demolish or remove such building within 12 months shall be prima facie evidence that the building is a menace to the public comfort, health, peace or safety and should be condemned. At the first Governing Body meeting following the 12 month period the administration shall present the Governing Body with a Resolution of Condemnation as provided for in Section 3-18-5 NMSA 1978 and proceed with condemnation as provided for under that statute.

§ 30-21 REPORTING ILLEGAL ACTIVITY; COOPERATION.

- (A) Las Cruces Code Enforcement shall notify Animal Control upon the discovery of violations of the Las Cruces Animal Control Ordinance.
- (B) Las Cruces Code Enforcement may notify the Police Department upon the discovery of violations of the Noise Control Ordinance.
- (C) Las Cruces Code Enforcement shall notify the department designated by the City Manager to enforce the Las Cruces Weed and Anti-Litter Ordinance and the Insect and Rodent Control Ordinance upon discovery of violations of those ordinances.
- (D) Las Cruces Code Enforcement shall notify the Las Cruces Police Department upon discovery of suspected criminal activity.
- (E) Las Cruces Code Enforcement shall coordinate its activities with the City Manager's Initiatives for Neighborhood Quality, Quality of Life, Neighborhood Action Team, City Legal Department or any other relevant activity or city initiative as directed by the City Manager.

§ 30-22 VACANT BUILDING MAINTENANCE.

- (A) The owner of a vacant building shall apply to the Las Cruces Community Development Department for and obtain a vacant building maintenance license 15 days prior to vacating the premises. The business maintenance license shall be renewed annually. The owner shall pay an annual fee to renew the business maintenance license. Las Cruces Code Enforcement shall establish the amount of the fee by regulation.
- (B) Application for a vacant building maintenance license shall be made on a form provided by the Community Development Department and verified by the owner. The application shall disclose all measures to be taken to ensure that the vacant building will be kept weather tight and secure from trespassers, safe for entry by police officers and firefighters in times of emergency, and, together with its premises, free from nuisance and in good order.
- (C) At the time of application, the owner shall arrange for inspection of the vacant building by the Community Development Department. If the owner fails or refuses to consent to and arrange for an inspection, the Community Development Department shall first obtain a search warrant from a court of competent jurisdiction to authorize inspection of the vacant building.
- (D) The Community Development Department shall inspect the vacant building to determine the structural integrity of the vacant building; the repairs necessary to ensure its structural integrity;

that it will be safe for entry by fire fighters and police officers in time of emergency; and that the vacant building and its contents do not present a hazard to the public during the time that the building remains vacant.

- (E) Las Cruces Code Enforcement and/or the Community Development Department shall issue any orders for work needed to:
- (1) Adequately protect the vacant building from intrusion by trespassers and from deterioration by the weather; and
 - (2) Insure that allowing the vacant building to remain will not be detrimental to the public health, safety and welfare, will not unreasonably interfere with the reasonable and lawful use and enjoyment of other premises within the neighborhood, and will not pose any extraordinary hazard to police officers or fire fighters entering the vacant building in times of emergency.
- (F) Within 45 days of the issuance of any orders, the owner shall bring the vacant building into compliance with any orders that may have been issued as conditions for the issuance of the license.
- (G) The Community Development Department shall issue a vacant building maintenance license only after inspecting the building and concluding that the building complies with the Uniform Housing Code, and or, LCMC Building Codes, including §§30-136 and 30-721. The City Manager is authorized to administer and enforce the Uniform Housing Code as provided in this Chapter if the vacant building does not comply with any other provisions of the Uniform Housing Code and or LCMC Building Codes, including §§30-136 and 30-721. Las Cruces Code Enforcement and/or the Community Development Department shall have the authority to inspect the vacant building at any time.
- (H) The owner shall notify the Community Development Department 15 days before a vacant building becomes inhabited so that Las Cruces Code Enforcement can inspect the vacant building prior to occupancy.

§ 30-23 PAYMENT OF RELOCATION COSTS.

- (A) Whenever the City Manager orders that all or a portion of a residential building be vacated pursuant to this code, the owner of such residential building (the "owner") shall pay relocation costs for the residents of such residential building who reside at the residential building when the order to vacate is issued, subject to the provisions contained in (D) 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 City or an agency designated by the City Manager 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 City or 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 City or the relocation agency refunded to them without interest except for any interest actually paid by the owner.

- (B) At the time the notice and order to vacate is served on the owner, in addition to other requirements of this code, notification shall be given to the owner that the owner may be required to pay the relocation costs of the displaced residents.
- (C) At the time that a notice of an order to vacate is served on the owner of a property pursuant to this Chapter, a notice in substantially the following form shall be served on those residents known by name to the City Manager. 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 MUST MOVE FROM WHERE YOU ARE LIVING
BECAUSE YOU MUST MOVE YOU MAY BE ENTITLED TO MONEY**

The City has found health and/or safety problems with the building where you live. The City has ordered this building to be closed.

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 Manager's Office at the following phone number and address, as soon as possible, for more information. If you wait more than 60 days you will lose your right to any money.

Phone Number:

Address:

- (D) After notice to the owner and a hearing at which the owner shall have an opportunity to appear and present evidence, the City Manager 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 a relocation agency, if any, that are owed but have not been reimbursed by the owner provided the City Manager proves:

- (1) The residents were parties to a rental agreement at the time the notice was served on the residents whose term had not expired;

- (2) 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;
 - (3) The residents did not cause or substantially contribute to the conditions that were the basis of the notice to vacate;
 - (4) The conditions that were the basis for the notice to vacate were not caused by fire, flood or other natural disasters;
 - (5) The failure to meet the requirements of this code was due substantially to the willful or grossly negligent acts or omissions of the owner;
 - (6) The resident was not in default for non-payment of rent;
 - (7) 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
 - (8) 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.
- (E) The City Manager 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.
- (F) The City Manager 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.
- (G) No action taken pursuant to this section shall affect the rights of residents and owners in any civil litigation. Nothing in this section shall be construed to change the obligations and rights of owners and residents as required in the Uniform Owner-Resident Relations Act, §§ 47-8-1 et seq. NMSA 1978.
- (H) 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.
- (I) A relocation agency may provide assistance in finding alternative housing for residents who are displaced and qualify for relocation assistance under this section.
- (J) 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 section. 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.

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

§ 30-24 VIOLATIONS.

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this code. The City Manager may, for any violation of this code, issue a citation in accordance with the provisions of this Chapter or LCMC Building Codes, including §§30-136 and 30-721 and/or take any other legal action at his disposal.

§ 30-25 PENALTY.

Any person violating any of the provisions of this Housing Code or failing or neglecting to comply with any orders issued pursuant to any section thereof shall be deemed guilty of a petty misdemeanor and such persons shall be guilty of a separate offense for each and every day or portion thereof during which any such violation is continued or permitted. Upon conviction of any such violations such person shall be subject to the penalty provisions set forth in the Las Cruces Municipal Codes Chapter 1 Section 1-10, et seq. as amended.

UNLAWFUL ACTIVITY. Revised 4/18

It is unlawful to commit public nuisance. Public nuisance consists of knowingly creating, performing, or maintaining anything affecting any number of citizens without lawful authority which is either injurious to public health, safety, morals, or welfare, or interferes with the exercise and enjoyment of public rights including the right to use public property. This may include, but is not limited to, the use of any electronic or mechanical device, including unmanned aircraft such as a drone.

('87 Code, § 10-6-1) (Ord. 81-16; Am. Ord. 82-47; Am. Ord. 18-02) Penalty, see § [10.99](#)

CHAPTER 18
NUISANCES; HEALTH AND SANITATION

18-1 SHORT TITLE. This chapter may be cited as the “Nuisance Abatement Ordinance.”

18-2 FINDINGS AND PURPOSE.

(A) It is the purpose of this subchapter to promote the health, safety and welfare of the citizens of the city by protecting property from blighting and deteriorating conditions by establishing minimum standards governing the maintenance, appearance and conditions of all residential and non-residential premises.

(B) It is the purpose of this subchapter to enhance the beauty and quality of the environment; promote the conservation of natural resources; prevent the spread of disease and the creation of nuisances; and to provide for the abatement of public nuisances.

(C) This subchapter shall apply to all buildings, structures and lands within the city without regard to use, the date of construction, improvement or alteration.

18-3 DEFINITIONS.

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

ABANDONED VEHICLE. A motor vehicle which has remained for more than 48 hours in a condition described by one of the following:

(1) Without license plates or a temporary registration conspicuously displayed thereon; or

(2) With license plates which have an expiration date more than 90 days prior to the date of inspection.

ABATE. To bring to a halt, eliminate or, where that is not possible or feasible, to suppress, reduce and minimize.

AIRBORNE PARTICULATE MATTER. Material discharged into or suspended in the air in finely-divided form, i.e., sand or dust.

AIRCRAFT. Any contrivance now known or hereafter invented, used or designated for navigation or for flight in the air including helicopters, lighter-than-air conveyances.

AUTHORIZED PRIVATE RECEPTACLES. A litter storage and collection receptacle as required in Chapter 50 of this code.

BLIGHT or BLIGHTED. Unsightly conditions including the accumulation of debris; fences characterized by holes, breaks, rot, crumbling, cracking, peeling or rusting; landscaping that is dead, characterized by uncontrolled growth or lack of maintenance, or is damaged and any other similar conditions of disrepair and deterioration regardless of other properties in the area.

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 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 Las Cruces for a limited period of time defined by court order. In the case of a vehicle, closure includes impoundment.

CITY ENGINEER. The chief administrative engineer of the city or that engineer's designee.

CONTRABAND. Any personal property that 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 activity.

DEBRIS. Any substance of little or no apparent economic value, which may be present in accumulations in excess of six inches in height and ten inches in diameter, including but not limited to deteriorated lumber, old newspapers, furniture parts, stoves, sinks, cabinets, household fixtures, refrigerators, car parts, abandoned or neglected equipment, or the scattered remains of items.

DETERIORATION. The condition or appearance of a building, structure or part thereof, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or other evidence of physical decay, neglect or lack of maintenance.

DIGGING. Excavating or turning up the soil with a spade or other hand tool.

DUST. Very fine particles that become airborne due to wind, traffic and other human activity.

ENCLOSED STRUCTURE. A structure at least six feet in height or tall enough to eliminate the public's view, including neighbors, of the interior and meets all applicable building codes.

EXPOSED TO PUBLIC VIEW. Any premises, or any building or any part thereof, which may be lawfully viewed by the public or any member thereof, from a sidewalk, street, alleyway, open-air parking lot or from any adjoining or neighboring premises.

EXTERIOR OF THE BUILDING. Those portions of a building which are exposed to public view and the open space of any premises outside of any building erected thereon.

EXTERIOR PROPERTY AREAS. Open space on the premises, on adjoining property and all sidewalks under the control of the owners or operators of the premises.

EXTERMINATION. The control or elimination of insects, rodents or other pests by recognized programs of integrated pest management which includes sanitation, harborage control and the use of approved pesticides and other legal pest elimination methods.

FENCES, SCREEN WALLS or RETAINING WALLS. Self-standing structures designed to provide semi-privacy, security or bank retention between grade separations.

FIRE HAZARD. Anything or act which may increase or may cause any increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by the Fire Inspector, or which may obstruct, delay or hinder the prevention, suppression or extinguishment of fire.

FIRE INSPECTOR. Department of Public Safety personnel authorized to exercise the powers and duties required in administering and enforcing the city's fire code.

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

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

GRADING. Leveling the soil and the removal of vegetation.

HANDBILL. Any printed, reproduced or written matter, or any sample or device which advertises any business, commercial establishment, person, meeting, exhibition, theatrical performance or other activity, for the purpose of either directly or indirectly promoting the interest thereof; or which, while containing reading matter other than advertising matter, is predominantly and essentially for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser for distributor, however, "newspaper," as defined herein, is not to be construed to be included within the definition of HANDBILL.

HAZARDOUS WASTE. Any chemical compound, mixture, substance or article which is identified or listed by the United States Environmental Protection Agency or appropriate agency of the state, except that, for the purpose of this article, hazardous waste shall include household waste,

HEALTH HAZARD. The presence of any items which adversely impact or jeopardize the wellbeing or health of an individual. Such items include human waste, medical or biological waste, sharps, gaseous or combustible materials, radioactive waste, dangerous or corrosive chemicals or liquids, flammable or explosive materials, friable asbestos, offal and decay matter.

INFESTATION. The apparent presence of unpleasant, damaging or unhealthful insects, rodents, reptiles or pests.

INOPERATIVE or INOPERABLE VEHICLE. Any motor vehicle which by reasons of dismantling, disrepair or other cause is incapable of being propelled under its own power.

LANDFILL. An area of land or an excavation in which solid wastes are placed for disposal and that employs an engineered method that minimizes environmental hazards and meets the requirements of the state solid waste regulations.

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 an agent or trustee for any person holding any of the foregoing.

LITTER. Decaying or non-decaying solid and semi-solid wastes, including but not limited to both combustible and non-combustible wastes, such as paper, trash, cardboard, waste material, cans, yard clippings, wood, glass, bedding, scrap paving material, discarded appliances, discarded furniture, dry vegetation, trees, which may harbor insect or rodent infestations or may become a fire hazard, and piles of earth mixed with any of the above foreign objects, including inoperable vehicles.

LOT. A parcel or tract of land, platted and placed on the Sandoval County Clerk's record in accordance with applicable laws and ordinances, generally as a portion of a subdivision intended for development purposes, including public right-of-way.

MOTOR VEHICLE. Any wheeled vehicle which is self-propelled or intended to be self-propelled.

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

OCCUPANT. A person, persons or legal entity that, through rights of ownership or tenancy, has possession or the use and enjoyment of the subject real property.

OWNER. A person, persons or legal entity listed as the current title holder as recorded in the official records of the Sandoval County Assessor's Office.

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.

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.

PREMISES. A lot, plot or parcel of land including the structures thereon.

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

PUBLIC NUISANCE.

(A.) Creating, performing, or maintaining anything affecting without lawful authority any number of citizens which is either injurious to public health, safety or welfare, or interferes with the exercise and enjoyment of public rights including the right to use public property.

(B.) 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 the equivalent Las Cruces Code of Ordinances, 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 § 131.07; or
 - (9) Unlawful carrying of a deadly weapon, 30-7-2 NMSA and § 131.22; unlawful possession of a handgun, 30-7-2.2 NMSA; negligent use of a weapon, 30-7-4 NMSA and 131.21; unlawful possession of a switchblade, 30-7-8 NMSA; receipt, transportation or possession by a felon of a firearm or destructive device, 30-7-16 NMSA; unlawful possession, transfer or sale of weapons, § 131.22;
- 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, § 134.03; 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 Las Cruces Uniform Housing Code; or
 - (77) Violations of the City of Las Cruces Housing Code defining nuisance; or
 - (78) Violations of City of Las Cruces Housing Code defining substandard building;
- or
- (79) Violations of the City of Las Cruces Fire Codes; or
 - (80) Violations of the City of Las Cruces's Abandoned or Inoperable Vehicle Ordinance; or
 - (81) Violations of the City of Las Cruces's Weed and Litter Ordinance; or
 - (82) Driving under the influence of intoxicating liquor or drugs, 66-8-102 NMSA or §12-6-12.1.

(C.) 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 § 18-1 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 in this code.

(D.) Public Nuisance Property Maintenance.

1. BUILDING AND STRUCTURE EXTERIORS.

(a) All exposed exterior surfaces shall be maintained so as to be free of deterioration that is a threat to health and safety, or shall not otherwise present a deteriorated or blighted appearance. Examples of the deterioration and blight include, but are not limited to:

- (i.) Stucco or paint that is deteriorated, indicated by peeling, flaking, cracked, blistering or mildew, resulting in exposed, bare unprotected surfaces over more than 30% of the exterior.
- (ii) Window screening that is not maintained in good condition.

(b) All structures on premises shall be safe, structurally sound and shall be maintained so that they do not constitute a hazard, blight or condition of disrepair. Examples of hazards, blight or conditions of disrepair are inclusive of, but not limited to leaning fences, fences that are missing numerous slats or blocks, graffiti, peeling paint, deterioration of paint or materials and rotting or damaged materials.

2. EXTERIOR PREMISES AND VACANT LAND.

(a) General land. All land, including exterior premises and vacant land, whether improved or unimproved, shall be maintained free from any accumulation of debris or blight, which includes, but is not limited to, graffiti on walls, fences or mail boxes, accumulation of litter, rubbish, refuse, waste material, bottles, paper, glass, cans, organic or inorganic material, inoperable or disabled vehicles, piles of mixed material, dry vegetation, rags, empty barrels, boxes, crates, packing cases, mattresses, bedding, lumber not neatly piled, lumber stored in front yards, scrap iron, tin and other metal

not neatly piled, or anything whatsoever in which insects, rodents, snakes or other
harmful pests may live, breed or multiply or which may otherwise create a health
hazard.

(b) Streets, alleys and sidewalks. The owner and any other responsible party in control
of any land abutting a sidewalk, alley or street shall maintain the sidewalk, alley or
street area in the same manner as provided in division (A) above. The areas
required to be maintained are as follows:

(i) Any portion of a street, which has been opened for public use,
between the curb line and the abutting property line including sidewalks;
provided that the owner, lessee or other person in control of any land utilized
for single-family residential shall only be required to maintain public right-of-
way areas not adjacent to collector or arterial streets.

(ii.) One-half of the width of abutting alleys from the property line to the
center of the alley.

(c) Stored materials. It shall be unlawful to accumulate and store building material,
lumber, boxes, cartons or other containers, machinery, scrap metal, junk, raw
material, fabricated goods and other items in a manner as to constitute a public
nuisance or rodent harborage.

(d) Exterior insect, rodent and animal control. All premises shall be kept free from
insect and rodent infestation and other noxious pests. The provision shall not require action
to disturb the natural activity of bees, rabbits or other insects and animals where the
activity is not a danger or nuisance to any resident or residents of the area and where
other applicable legal requirements are met.

(e) Drainage. All premises shall be maintained so as to prevent the accumulation of
stagnant water when the water causes a hazardous or unhealthy condition, or
becomes a breeding area for insects. This does not apply to city-approved retention
basins or similar conditions.

3. VEGETATION.

(a) All exterior property areas which have been altered from their natural state or
developed in any way, shall be kept free from dry vegetation, tumbleweeds, weeds,
bushes and tall grass and trees which present a visual blight upon the area or which
may harbor insect or rodent infestations, and dry vegetation which may likely become a
fire hazard or result in a condition which may threaten the health and safety or the
economic welfare of adjacent property owners or occupants. This requirement shall
apply to the road right-of-way that abuts the property line on any side of any lot.

(b) The premises shall be free from weeds higher than 12 inches tall. All vegetation
shall be kept from becoming overgrown and unsightly so as to constitute a public nuisance
to any adjoining property.

(c) The approved methods of controlling weeds shall be mowing, cutting, digging or other methods designed to remove the weeds but not disturb other vegetation or unnecessarily disturb the soil. The grading and tillage of lots is prohibited unless written permission of the City Engineer has been obtained.

(d) The city shall be responsible for weed control on dedicated open space, drainage rights-of-way and improved right-of-way of arterial and collector roads, unless responsibility has otherwise been delegated, e.g., via a development agreement, development plan, zone map amendment, and the like.

4. INOPERABLE OR ABANDONED VEHICLES.

(a) Outdoor storage of inoperable or abandoned vehicles or parts thereof on the premises is prohibited. Inoperable or abandoned vehicles may only be stored on the premises within a building so as not to be visible from any adjoining property or public road. Vehicles shall not be used for storage or other purposes unless enclosed within a building on the premises.

(b) This section shall not apply in an area where an activity is within the contemplated purposes of a duly licensed business with the appropriate zoning, or where vehicles are kept in an enclosed structure, or when vehicles are owned and actively being restored by the owner or tenant of the premises. A motor vehicle is being actively restored if within the last 30 days the owner has spent at least ten hours of labor in repairing, rebuilding or reconstruction of the motor vehicle. The burden shall be on the owner of the vehicle to prove that it is being actively restored which may include receipts for purchase of parts and supplies during the last 30 days which have been installed on the vehicle.

(i) Any person, being owner or tenant, may store, permit to be stored or allow to remain upon his residential premises, any dismantled, partially dismantled inoperative motor vehicle, or parts thereof, for a period not to exceed one month, if the motor vehicle is registered in the resident's name; or

(ii) when not within a wholly enclosed structure, if fully covered and placed in the side or back yard. Any vehicle must be at least five feet from any property line and at least five feet from any permanent structure.

(c) Any person violating this section may, in the event of hardship, request an extension of this subchapter's compliance period by a written request to the City Development Services Director.

(d) This section shall not be construed to permit the parking or placement of inoperable or abandoned motor vehicles on any public street. Placement of inoperable or abandoned vehicles on any public street is subject to enforcement by the Department of Public Safety.

5. LITTERING.

(a) Litter in public places. No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the city except in public receptacles, in city approved receptacles for collection or at a state approved sanitary landfill.

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public (b) Placement in receptacles; prevention of scattering. Persons placing litter in public receptacles or in authorized private receptacles shall do so in a manner as to prevent from being carried or deposited by the elements upon any public or private place. Receptacles shall not be placed or positioned in a manner which may constitute a nuisance or obstruction.

(c) Throwing or distributing handbills or newspapers.

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thereof, (i) Handbills at public places. No person shall throw or deposit any handbill in upon any public place within the city. However, it shall not be a violation of this subchapter for any person to hand out, without charge to the receiver thereof, any handbill to any person willing to accept it in public places.

(ii) Placing handbills on vehicles. No person shall throw, attach or deposit any handbill in or upon any vehicle.

(iii) Distributing handbills or newspapers at private premises.

(iv) Handbills may be placed or deposited in or upon inhabited private premises by these methods:

1. Handing or transmitting handbills directly to the occupant of the property then present in and upon the premises; or

2. Placing and depositing the handbills in a way as to secure the handbills from being blown or drifting about the premises or upon public places.

(v) No handbill or newspaper shall be deposited upon or to any private premises if either of the following applies:

1. The private premises are temporarily or continuously uninhabited or vacant.

2. If required by any resident thereon not to do so, a sign no larger than one square foot with letters a minimum of one inch in size, must be placed on the premises in a conspicuous position near the front entrance. The sign must contain the words "No Solicitation," "No Distribution," "No Trespassing" or equivalent wording to indicate that the occupants of the premises do not desire to be molested or have their right of privacy disturbed, or to have the handbills left upon the premises.

(vi) The provisions shall not apply to agencies of federal, state, county or city government, and regulated public utilities with respect to communications or distribution of materials with their customers concerning official business, e.g., distribution of all articles upon which United States postage has been paid, notices of violation, utility bills, telephone directories or package delivery notices.

(d) Dropping litter from aircraft. No person in aircraft shall throw out, drop or deposit any litter.

(e) Posting or affixing notices and posters. It shall be unlawful to post or affix any notice, poster or other paper or device calculated to attract the attention of the public to any lamp post, public utility pole, street median, public right-of-way, tree in the public right-of-way, or upon any public structure or building except as may be authorized or required by law.

(f) Unlawful dumping or disposal of solid waste. It shall be unlawful to dispose of solid waste in any manner other than as specified in Chapter 50 of this code.

1. Unlawful to dump. It shall be unlawful for any person to place or dump solid waste or debris in any arroyo, stream bed, drainage ditch, public fountain or any public body of water within the boundaries of the city.

(g) Transportation of solid waste. No person shall drive or move any vehicle within the city that has been loaded with solid waste unless the solid waste is covered or securely loaded in a manner to prevent littering.

6. DUST CONTROL.

(a) No person shall discharge from any source whatsoever the quantities of airborne particulate matter which may cause injury, detriment, nuisance or annoyance to the public without taking reasonable precautions to prevent particulate matter generated by the activity from becoming airborne.

(b) No person or person in control of any property shall disturb, move onto or remove soil from any area without utilizing every reasonable method, such as watering or the use of erosion control fencing, to limit the airborne particulate to the boundaries of the property.

(c) Where grading permits are required pursuant to § 153.06, the grading permit must be obtained from the City Engineer's office before any soil or vegetation is disturbed. Dust control measures shall conform to drainage control, flood control and erosion control policies, standards, criteria and procedures established by the City Engineer. It shall be considered a violation of this section and grounds for cancellation of the grading permit if the work schedule, pollution prevention measures, and other relevant items are changed from those specified in the permits, unless the permittee has first obtained written approval of the City Engineer.

7. DUMPING ON PROPERTY. It shall be unlawful for any person to place or dump solid waste or debris on any property within the city whether owned by the person or not.

(a) Vacant lots or land. Vacant lots or lands which have been the subject of repeated dumping shall be secured to prevent future occurrences of dumping. Methods of securing vacant lots or lands must be approved and may include permanent fencing, ditch or berm, or placement of four-foot-high posts at four-foot intervals. Signs stating "no dumping" shall be erected in accordance with applicable ordinances on vacant lands which have been subject to dumping on more than one occasion.

(b) Rebuttable presumption of violation. Whenever any litter is discovered to contain any article or articles, including but not limited to letters, bills, publications, or other writings which display the name of a person thereon in such a manner as to indicate that the article belongs or belonged to such person, it shall be a rebuttable presumption that such person has violated this subsection.

PUBLIC PLACE. Any and all rights of way, and any and all public parks, spaces, grounds and buildings.

PUBLIC RIGHT-OF-WAY. Paved or unpaved streets and adjoining public real property, alleys, drainage, gutter or other public easements and lined or unlined drainage channels which comprise the municipal storm drainage system.

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.

REFUSE. Includes, but is not limited to all putrescible and nonputrescible solid wastes (except body wastes) including ashes, waste or unwholesome material of any kind, street cleanings, dead animals, abandoned motor vehicles, vehicle parts and solid market and industrial wastes.

RESIDENTIAL BUILDING. A building or portion thereof designed or used for human habitation.

RESPONSIBLE PARTY. An occupant, lessor, lessee, manager, licensee or other person having control over a structure or parcel of land; and, in the case where the demolition of a structure is proposed as a means of abatement, any lienholder whose lien interest is recorded in the official records of the Sandoval County Assessor's Office.

RUBBISH. Includes, but is not limited to all nonputrescible solid wastes such as paper, cardboard, cans, wood, yard clippings, leaves, glass, bedding, crockery and other similar materials.

SCREENED AREA, EXTERIOR. An area separated by a permanent non-flexible device to completely conceal one element of a property from other elements or from adjacent or contiguous property. Examples include but are not limited to fencing six feet in height that is made from solid brick or chain link fencing with opaque slats.

SOLID WASTE. Includes, but is not limited to any garbage, litter, refuse, rubbish, special waste, white goods, debris and other discarded materials originating from residential, commercial or industrial sources.

SPECIAL WASTE. Includes, but is not limited to any solid waste which requires special handling or a special sign such as, but not restricted to, incinerator ash, infectious and noninfectious medical waste, petroleum products, hazardous waste, white goods and tires.

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.

TILLAGE. Cultivating, plowing or turning over the soil.

VEGETATION. Plant life of any kind.

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.

WATER. Water provided through the system through which the city receives its water or any extensions thereof, as well as through private wells and delivery systems.

WATER WASTE. The non-beneficial use of water that is supplied by any water supply system within the municipality.

WEEDS. Pigweed (*lamaranthus retroflexus*), Russian thistle (*salsola pestifer*), or ragweed (*ambrosia* spp.) commonly referred to as tumbleweeds. For the purpose of this subchapter, WEEDS shall also mean plants that, by reason of abandonment, lack of care or lack of maintenance, choke out growth of other plant material in the area, and dead, dying or unattended plant life, named or unnamed, which is abandoned or overgrown.

WHITE GOODS. Includes, but is not limited to any major appliances, such as washing machines, clothes dryers, hot water heaters, stoves and refrigerators.

18-4 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 Las Cruces 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 Las Cruces 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.

18-5 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 owners, but not limited to the defendant himself, his or her family members and relatives, and tenants, occupants, guests, and other persons; 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 and City Zoning Code, 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, if 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.

18-6 CIVIL ABATEMENT OF PUBLIC NUISANCE OFFENSES: IN REM PROCEEDINGS

(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.

18-7 PROCEDURE FOR NUISANCE ABATEMENT

(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 Las Cruces. 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, receiversships, 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 City Manager's designee shall post a notice at the main entrances to the buildings or at some other prominent place on the real property. The City Manager'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 Dona Ana County Clerk and/or the Dona Ana 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 City Manger'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 City Manager'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:

- (i) The public nuisance poses a threat to public safety; or
- (ii) Notice could jeopardize a pending investigation of criminal or public nuisance activity, confidential informants, or other police activity; or
- (iii) Notice could result in sale, transfer, encumbrance or destruction of the property; or
- (iv) Other emergency circumstances exist; or
- (v) 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 Manager's designee to remove any notice posted under the provisions of this subsection.

(J) Whenever a civil action is filed pursuant to § 91.05 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 § 91.05 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 City Manager 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) 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 City Manager. 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 City Manager, 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 Manager's Office 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:

(3) After notice to the owner and a hearing at which the owner shall have an opportunity to appear and present evidence, the City Manager 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 City Manager 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.

(8) The City Manager'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.

(9) The City Manager 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.

(10) 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.

18-7 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 Las Cruces. Public nuisances cause immediate and irreparable injury, damages and losses to the citizens of Las Cruces 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.

18-8 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 City Manager'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 City Manager'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 City Manager'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 City Manager'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 City Manager'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 City Manager'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 City Manager's designee to perform these duties in lieu of the owners. If the City Manager'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.

18-9 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.

18-10 REMEDIES FOR PUBLIC NUISANCE

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.

If 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. If 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.

18-11 JUDGMENT FOR COSTS AND ATTORNEY'S 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.

18-12 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.

18-13 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.

18-14 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.

18-15 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 Las Cruces Environmental Health Department.
 - (c) The Las Cruces 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 Sandoval 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.

(C) *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 to the Nuisance Abatement Ordinance will cause the City to file action in court.

(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.

(D) *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 Las Cruces 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 Las Cruces 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 Las Cruces Police Department.

(E) *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 Las Cruces 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 Las Cruces 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 Las Cruces 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 Las Cruces 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.

- (F) *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.
- (G) *Record retention.* The City 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.
- (H) *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 the Uniform Housing Code, Building Code or Nuisance Abatement Ordinance, 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.

(l) *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.

(J) *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.

(K) *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. The city may charge impoundment fee upon approval from the City Manager. The city or its contractors may remove property as part of its remediation effort.

(L) PENALTIES

1. 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.
2. 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.
3. All other violations of this subpart shall be subject to the penalty provisions of § 10.99.

18-16 FERAL PIGEONS.

(A) The following acts are hereby declared a public nuisance and a violation under the ordinance codified in this section:

- (1) Intentionally feeding feral pigeons on any property within the city; or

(2) Allowing the accumulation of pigeon excrement, nesting materials, pigeon carcasses and other pigeon related detritus on property owned, controlled or occupied by such person.

(B) Each act in violation of this section shall constitute a separate violation.

(C) Nothing in this section shall be deemed to prohibit:

(1) The maintenance of domesticated birds used for show or for racing, or injured pigeons that are kept at all times in cages or are otherwise prevented from creating a pigeon nuisance; or

(2) Setting out bird seed in bird feeders or otherwise provided to birds other than pigeons; provided, that the seed does not attract significant numbers of pigeons or create conditions that constitute a pigeon nuisance.

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