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 RECEPACLES. 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
(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.


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 materials.
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 right-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 the 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 or 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.

(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 it 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 public nuisance or obstruction.

(c) Throwing or distributing handbills or newspapers.

(i) Handbills at public places. No person shall throw or deposit any handbill in or 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 obtained are changed from those specified in the permits, unless the permittee has first 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 but not limited to the defendant himself, his or her family members and relatives, and owners, 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, receiverships, permanent injunctions, liens, sales and destruction. Any person holding any legal or equitable interest or right of possession in the property who has not been named as a defendant may intervene as a defendant.

(I) Notification before filing civil action.

   (1) At least ten (10) calendar days before filing a civil action under this ordinance involving any seizure, closure, or receivership of real property, the 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 Manager'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 ATTORNEYS’ FEES

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

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 not to permit people from occupying such property. Compliance with this subsection shall not eliminate the requirement that the property not be occupied.

(I) 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 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.