

Chapter 16 - NUISANCES

Footnotes:

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Editor's note— Ord. No. 21-05, § 1, adopted June 10, 2021, repealed the former ch. 16, §§ 16-1—16-12, 16-16—16-33, 16-36—16-45, 16-61—16-67, and enacted a new ch. 16 as set out herein. The former ch. 16 pertained to similar subject matter and derived from Code 1984 §§ 15-1—15-18, 16-21, 16-25, 16-29, 19-1—19-7, 27-100—27-109; Ord. No. 1239, adopted April, 1993; Ord. No. 1298, adopted Feb., 1998; Ord. No. 1320, adopted April, 1999; Ord. No. 00-3, § 6, adopted June, 2000; Ord. No. 3-10, adopted Aug., 2003; Ord. No. 04-06, adopted March, 2004; Ord. No. 04-09, adopted Aug., 2004; Ord. No. 15-11, § 1, adopted Aug. 6, 2015; Ord. No. 18-11, §§ 1, 4, adopted June 13, 2019.

ARTICLE I. - IN GENERAL

Sec. 16-1. - Prohibited generally; abatement.

It shall be unlawful for any person within the city to permit, suffer or maintain the existence of any nuisance in fact upon any property under his control. The chief of police and the code enforcement officer are hereby authorized to abate any such nuisance existing within the city.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-2. - Public nuisances, generally.

It shall be unlawful for any person to commit public nuisance, consisting of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either:

- (1) Injurious to public health, safety, morals or welfare; or
- (2) Interferes with the exercise and enjoyment of both public and private property rights.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-3. - Storage of junk.

All dealers in secondhand goods or junk shall keep the goods or junk in an enclosed building, so as to protect it from the weather, to prevent the accumulation of water, or other trash and substances such as will make the same a nuisance.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-4. - Overgrown property.

- (a) Overgrown property is property which constitutes plants, weeds, trees and grass protruding over public pathways, or property which by the constitution of its vegetation, may be deemed to be a fire hazard, or one which has become an eyesore or likely to cause the breeding of vermin and other pests, due to lack of maintenance.
- (b) No owner, lessee or occupant or the agent, representative or employee of such owner, lessee or occupant, having control of any lot, tract or parcel of land or any part thereof within the city shall allow, permit or maintain, any overgrown property.

This subsection shall not be construed to apply to alfalfa or other agricultural crops, farm or garden produce or other cultivated products.

- (c) Whenever any nuisance prohibited in this section shall be found to exist upon private property within the city, the code enforcement officer shall order, in writing, the owner, lessee or occupant or the person who permits such nuisance to exist to cut and remove the same within ten days after the service of such notice upon them.
- (d) In the event any such property owner or the person who permits such nuisance to exist shall fail to comply with such order, any person interested shall file a complaint for violation of this section, and the city may elect to cause the nuisance to be abated by removal of the weeds and shall have a lien against the property for the costs of such removal.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-5. - Offensive matter.

- (a) No person shall permit any ground, building, ditch or other premises within the city, owned or occupied by them, or of which they shall be the agent having charge of the same, to become or be offensive, nauseous, hurtful or dangerous to the neighborhood or travelers, by reason of stagnant water, dead animals or from any cause.
- (b) No person shall allow to flow from any house, shop, factory, stable, slaughterhouse or any place any foul or nauseous liquid or substance of any kind whatsoever into or upon any adjacent ground or lot or into any street, alley or ditch within the city, so as to be offensive, nauseous, hurtful or dangerous. No person shall deposit in any such place any filth, litter or refuse or any carcass or thing so as to be offensive, nauseous, hurtful or dangerous to any portion of the inhabitants of the city.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-6. - Unsanitary or hazardous premises; certain solid wastes.

- (a) It shall be unlawful for any person to permit or cause to remain in or about his premises any solid waste, automobiles not in operating condition, waste water or any conglomeration or residue thereof, which emits odors or serves as a feeding or breeding place for flies, insects or rodents, obstructs pedestrian traffic, or which is otherwise unsanitary, hazardous, or injurious to public health.
- (b) The accumulation of building materials, pipes, lumber or boxes may be maintained on such premises if such accumulation is evenly piled and stacked for a period not to exceed 90 days as determined by the code enforcement officer.
- (c) It shall be unlawful for any person to permit in the area surrounding mechanically transported dumpsters and racks any, accumulation of weeds, tall grass, brush, briars, tree sprouts and solid waste scattered by reason of overturned dumpsters; and all persons shall keep the lids on the dumpsters closed at all times to prevent the scattering of solid waste.
- (d) Every premises intended for or actually used for human habitation or occupation is required to maintain access to a source of potable water and sewage system, and shall be connected to city water and sewage utility system, as described in chapter 26, unless the owner demonstrates access to private water and sewage systems meeting all applicable municipal, state and federal requirements.
- (e) All outside storage of materials shall comply with article 52, section 9 of the Roswell Zoning Ordinance.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-7. - Abandonment of dangerous containers.

It shall be unlawful for any person to commit abandonment of dangerous containers, consisting of abandoning, discarding or keeping in any place accessible to children, any refrigerator, icebox, freezer, airtight container, cabinet or similar container, of a capacity of one and one-half cubic feet or more, which is no longer in use, without having the attached doors, hinges, lids or latches removed or without sealing the doors or other entrances so as to make it impossible for anyone to be imprisoned therein.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-8. - Inspections.

- (a) City code enforcement officers are authorized to conduct inspectorial searches, as that term is defined in NMSA 1978, § 24-1-16, in order to investigate the existence on or in any real property within the city of a public nuisance or other violation of this chapter.
- (b) Such officers may enter, at all reasonable times, if the officer has the occupant's or custodian's consent, any real property within the city to ascertain the existence of any public nuisance.

- (c) In the event that consent to an inspectorial search has been refused or is otherwise unobtainable within a reasonable period of time, the officer may apply to the presiding judge of the city municipal court for an inspection order. The application shall state by oath or affirmation of the code enforcement officer the facts alleged showing probable cause of the existence of a public nuisance or other violation of this chapter in or upon the real property and the basis of such alleged facts. The judge shall, upon a finding of probable cause, issue an inspection order detailing the real property to be inspected and the alleged public nuisance to be abated.
- (d) Notwithstanding the foregoing, whenever it reasonably appears to any code enforcement officer that there may be a public nuisance or other violation of this chapter imminently dangerous to health and safety, the detection or correction of which requires immediate access, without prior notice, to premises for purposes of inspectorial search, and if consent to such search is refused or cannot be promptly obtained, the code enforcement officer may make an emergency inspectorial search of the premises without an inspection order.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-9. - Roswell Smoke Free Air Act of 2004.

- (a) *Findings and intent.* The city council finds that secondhand tobacco smoke is a significant health hazard and declares that the purpose of this ordinance is to protect the public health and welfare by prohibiting smoking in public places and places of employment.
- (b) *Definitions.*

Act means the provisions of the section entitled as the "Roswell Smoke Free Air Act of 2004," together with any amendments thereto, codified as section 16-9 of the Roswell City Code.

Designated outdoor smoking area means an area where smoking may be permitted in an outdoor patio area of a private club that is not covered by a roof which is part of a building or extension of such building, and which has been designated by an employer or manager as such, provided that the following conditions are maintained:

- (1) Smoking shall not be permitted near any building entrance, including a door, window or ventilation system of any facility where smoking is permitted, so as to prevent secondhand smoke from entering the indoor portion of the place of employment or the indoor portion of a public place; and
- (2) Employees or members of the general public are not required to walk through the designated smoking area to gain entrance to the indoor portion of a place of employment or the indoor portion of a public place;
- (3) Signs shall be conspicuously posted indicating that the patio area is a designated smoking area under this Act; and
- (4)

Complies in all respects with the provisions of the Dee Johnson Clean Indoor Act (NMSA 1978, § 24-16-1 et seq.) as pertains to designated smoking areas.

To the extent permitted by the provisions of the Dee Johnson Clean Indoor Air Act, a designated outdoor smoking area may have privacy or decorative screening on the perimeters of such patio area, provided that it is not covered by a roof, canopy, awning or fabric.

Employee means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

Employer means a person, business, partnership, association, corporation, including a municipal corporation, trust or non-profit entity that employs the services of one or more individual persons.

Enclosed area means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways) that extend from the floor to the ceiling, and include patio areas at restaurants or private clubs that are not designated outdoor smoking areas.

Place of employment means an area under the control of a public or private employer at which more than one person is present during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

Public place means an enclosed area to which the public is invited or permitted or to which members of a club, country club, lodge, or fraternal organization are invited or permitted, including but not limited to, banks, bars, bingo facilities, bowling alleys, educational facilities, government buildings, health care facilities, health clubs, laundromats, lounges, professional offices, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

Restaurant means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include an attached bar and any outdoor patio area.

Retail tobacco store means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Section means the numbered sections that comprise the provisions of this ordinance.

Smoking means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe or other tobacco product in any manner or in any form.

(c) *Prohibition of smoking in public places; exceptions.* Smoking shall be prohibited in all enclosed public places within the city, except for patio areas of private clubs that are designated outdoor smoking areas, but only during such times and dates for those events previously authorized by a special permit issued by the city clerk, which shall be limited to four events per month. The times and dates of said events shall be conspicuously posted at the private club and on the club's website. No event shall last longer than six hours. During such events, service of food or drink by employees of the private club shall not take place in the outdoor designated smoking area.

(d) *Prohibition of smoking in places of employment: exceptions.*

(1) Smoking shall be prohibited in all enclosed facilities within places of employment, except as provided in subsections (3) and (4) of this subsection. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.

(2) This prohibition on smoking shall be communicated to all existing employees no later than the effective date of this Act and to all prospective employees upon their application for employment.

(2) Smoking is permitted in an enclosed office or room within a place of employment or in a vehicle used in employment, provided that:

- a. The smokers are the only persons present in the room or office; and
- b. The smoke does not enter areas where other persons are present or permitted; and
- c. The smoke is filtered or otherwise dissipates before other persons enter the room or office.

This exception does not apply to places declared to be entirely nonsmoking pursuant to subsection (h).

(4) Smoking is permitted in a designated outdoor smoking area of a private club within a place of employment, but only when authorized by a special permit issued by the city clerk as provided in subsection (c) above.

(e) *Reasonable distance.* Smoking is prohibited within 15 feet of any public entrance outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or other means.

(f) *Where smoking not regulated.* Notwithstanding any other provision of this Act to the contrary, the following areas shall be exempt from the provisions of subsections (c) and (d):

- (1) Private residences, except when used as a child care, adult day care, or health care facility.
- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms.
- (3)

Retail tobacco stores; provide that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Act.

- (4) Private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted.
- (5) Outdoor areas of places of employment except those covered by the provisions of subsection (e), and except for patio areas of restaurants or private clubs that are not designated outdoor smoking areas.
- (6) Vehicles parked at a drive-in restaurant or driving in a drive-through area of a restaurant or other drive-through facility.
- (g) *Declaration of establishment as nonsmoking.* Notwithstanding any other provision of this Act, an owner, operator, manager, or other person in control of an establishment, facility or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of subsection (h) (1) is posted.
- (h) *Posting of signs.*
 - (1) "No Smoking" signs or the international "No Smoking" symbol (consisting of a representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Act, by the owner, operator, manager or other person in control of that place. Office buildings and shopping malls with multiple tenants may display such signs at all public entrances to the building or shopping mall, rather than at the office or store of each tenant.
 - (2) All ashtrays shall be removed from any area where smoking is prohibited by this Act by the owner, operator, manager, or other person having control of the area.
- (i) *Non-retaliation.* No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer exercises any rights afforded by this Act or reports or attempts to prosecute a violation of this Act. No employee shall be required to work in a designated outdoor smoking area.
- (j) *Enforcement.*
 - (1) Enforcement of the provisions of this Act shall be by citation from the city police department, the city fire inspector(s), or the city code enforcement officers.
 - (2) Whenever necessary to make an inspection to enforce any of the provisions of this Act or whenever the officers defined in paragraph (1) of this subsection have reasonable cause to believe that there exists a violation of this section the officer may enter the building or

premises at all reasonable times and to inspect the same to perform any such duties imposed upon the officer by this section.

- (3) Notice of the provisions of this Act shall be given to all applicants for a business license in the city.
 - (4) Any citizen who desires to register a complaint under this article may initiate enforcement with the code enforcement department of the city.
 - (5) The fire department, code enforcement department or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Act.
 - (6) An owner, manager, operator, or employee of an establishment regulated by this Act shall inform persons violating this article of the appropriate provisions thereof.
 - (7) Notwithstanding any other provision of this Act, an employee or private citizen may bring legal action to enforce this Act.
 - (8) In addition to the remedies provided by the provisions of this section, the city code enforcement department or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment, to comply with the provisions of this Act, may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.
- (k) *Violations and penalties.*
- (1) A person who smokes in an area where smoking is prohibited by the provisions of this Act shall be guilty of a petty misdemeanor, punishable by a fine not exceeding \$50.00.
 - (2) A person who owns, manages, operates or otherwise controls a public place or place of employment and who fails to comply with the provisions of subsection (h) of this Act shall be guilty of a petty misdemeanor, punishable by:
 - a. A warning for a first violation.
 - b. A fine not exceeding \$100.00 for a second violation within one year after the warning.
 - c. A fine not exceeding \$200.00 for each additional violation within one year after the warning.
- (l) *Other applicable laws.* This Act shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.
- (m) *Liberal construction.* This Act shall be liberally construed so as to further its purposes.
- (n) *Severability.* If any provision, clause, sentence or paragraph of this section or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

(o) *Effective date.* This Act shall be effective August 1, 2004.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-10. - Noise generally.

- (a) It shall be unlawful for any person within the city to create any unreasonably loud, disturbing or unnecessary noise or noise of such character, intensity or duration as to be detrimental to the repose, life or health of others.
- (b) Without limiting the generality of subsection (a), the following acts within the city shall be unlawful:
 - (1) The continuous sounding of any horn or other signal device on any automobile, truck, bus or motorcycle, except in accordance with state law.
 - (2) The playing of any radio, stereo, CD player, cassette player, television, musical instrument, or other audio device in such a manner or with such volume as to interfere with conversation at 75 feet from the source of the noise.
 - (3) The use of any automobile, truck, bus, motorcycle or internal-combustion engine so out of repair or so loaded or in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise.
 - (4) The use of any loudspeaker, public-address system, instrument or device to attract attention, perform a show, sell or display merchandise, or while on the streets, sidewalks or alleys between the hours of 10:00 p.m. and 6:00 a.m.
 - (5) The use upon the streets, alleys, sidewalks or any other public place any type of public address system or loudspeaker, without having first obtained permission from the chief of police.
 - (6) The sounding of any device or piece of equipment, including but not limited to a retarder, which helps slow a motor vehicle's rate of speed. When activated a retarder creates noise through the vehicles exhaust system. A retarder means any exhaust and/or engine device used to slow down a motor vehicle's rate of speed.
 - (7) Excessive use of a generator in residentially zoned areas and after daylight hours.
- (c) Exceptions to the noise ordinance in residential zoning districts are as follows:
 - (1) Sporting events, limited to no more than one event per month and no later than 11:00 pm.
 - (2) Licensed construction activities.
 - (3) Emergency vehicles and warning sirens.
 - (4) Block parties approved by the city police department.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-11. - Dwellings unfit for human habitation.

- (a) Dwellings which are unfit for human habitation include, but are not limited to, those which are unfit due to dilapidation, defects increasing risk of fire, accidents, or other calamities, lack of ventilation, light, sanitary facilities, uncleanness, dilapidation, or structural defects, or which are otherwise unsafe or unsanitary or dangerous or detrimental to the health, safety, or welfare of the occupants of the dwelling, occupants of neighboring dwellings or other residents of the municipality, or which have a blighting influence on neighboring properties, or which are in violation of any health, fire, building, or zoning regulations or any other laws or regulations relating to the use of land and the use and occupancy of buildings and improvements, shall be subject to this chapter.
- (b) By adopting this section, the city is authorized by statute to require or cause the repair, closing, demolition, or removal of a dwelling unfit for human habitation as provided for in this section.

Dwelling means any building or structure or part thereof intended to be used for human occupancy and includes any appurtenances usually enjoyed in the dwelling.

- (c) The city manager is appointed to exercise the powers prescribed by this chapter.
 - (1) The city manager is also authorized to exercise powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of the Urban Development Law, including the following powers, in addition to others granted in the Urban Development Law, NMSA 1978 § 3-46-43:
 - a. To have city code enforcement officers investigate the dwelling conditions in the municipality in order to determine which dwellings are unfit for human habitation;
 - b. To administer oaths and affirmations, examine witnesses, and receive evidence;
 - c. To have city code enforcement officers enter upon such premises for the purpose of making examinations, provided that the entries shall be made in a manner as to cause the least possible inconvenience to those involved and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;
 - d. To appoint and fix the duties of any officers, agents, and employees as it deems necessary to carry out the purposes of the ordinance; and
 - e. To delegate any of his or her functions and powers under the ordinance to officers, agents, and employees as he may designate.
- (d) Whenever it appears to the city manager that a dwelling is unfit for human habitation, the city manager shall, if a preliminary investigation discloses a basis for the charges issue and cause to be served on the owner, every mortgagee of record, and all parties in interest in that dwelling, a complaint stating the charges and including the following:

(1)

Notice that a hearing will be held before the city council, at a place named in the complaint, not less than ten or more than 30 days after the serving of the complaint;

- (2) Notice that the owner, mortgagee, and parties in interest shall be given the right to file an answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint; and
 - (3) Notice that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the city manager or his designee.
- (e) If, after notice and hearing, the city council determines that the dwelling under consideration is unfit for human habitation, it shall state in writing its findings of fact in support of that determination and shall cause to be served upon the owner an order, in writing, that advises the owner of his rights under this section, and that:
- (1) If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling, the city manager shall fix a certain percentage of cost as being reasonable for that purpose and require the owner, within the time fixed in the order, to repair, alter, or improve the dwelling to render it fit for human habitation, or to vacate and close the dwelling as a human habitation, the latter only after following statutory procedures regarding tenants' rights; or
 - (2) If the repair, alteration, or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling, the city manager shall fix a certain percentage of the cost as being reasonable for the purpose and require the owner, within the time specified in the order, to remove or demolish the dwelling;
 - (3) If the owner fails to comply with an order to repair, alter, improve, or vacate and close the dwellings, the city manager may cause the dwelling to be repaired, altered, or improved, or to be vacated and closed;
 - (4) If the owner fails to comply with an order to remove or demolish the dwelling, the city manager may cause the dwelling to be removed and demolished; and
 - (5) The amount of the cost of repairs, alterations, or improvements, or the vacating and closing, or the removal and demolition shall be assessed as a lien against the real property upon which the cost was incurred; and
 - a. If the dwelling is removed or demolished by order of the city manager, the city shall sell the materials of the dwelling, if any, and credit the proceeds of the sale against the cost of the removal or demolition; and
 - b. Any balance remaining shall be deposited in the district court by the city manager and shall be secured in the manner as may be directed by the court, and shall be disbursed by the court to the person(s) found to be entitled to the balance by final order or decree of the court.

- (f) Complaints or orders issued by the city manager shall be served upon persons either personally or by registered mail. If the whereabouts of the persons are unknown and cannot be ascertained by the city manager in the exercise of reasonable diligence, and the city attorney makes an affidavit to that effect, then the serving of the complaint or order upon the persons may be made by publishing the complaint or order once each week for two consecutive weeks in a newspaper printed and published in the municipality. A copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of the complaint or order shall also be filed with the clerk of the county in which the dwelling is located. Filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.
- (g) Any person affected by an order issued by the city manager may file an appeal pursuant to the provisions of NMSA 1978, § 12-8A-1.
- (h) Nothing in this section shall be construed to abrogate or impair the powers of the courts or of a department of a municipality to enforce any provisions of its ordinances or regulations, or to prevent or punish violations thereof. The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-12. - Dangerous buildings or debris; removal; notice; right of city to remove; lien.

- (a) Whenever any building or structure is ruined, damaged and dilapidated, or any premise is covered with ruins, rubbish, wreckage or debris, the city council may by resolution find that the ruined, damaged and dilapidated building, structure or premises is a menace to the public comfort, health, peace or safety and require the removal from the city of the building, structure, ruins, rubbish, wreckage or debris.
- (b) A copy of the resolution shall be served on the owner, occupant or agent in charge of the building, structure or premises. If the owner, as shown by the real estate records of the county clerk, occupant or agent in charge of the building, structure or premises cannot be served within the city, a copy of the resolution shall be posted on the building, structure or premises and a copy of the resolution shall be published one time.
- (c) Within ten days of the receipt of a copy of the resolution or of the posting and publishing of a copy of the resolution, the owner, occupant or agent in charge of the building, structure or premise shall commence removing the building, structure, ruin, rubbish, wreckage or debris, or file a written objection with the municipal clerk asking for a hearing before the city council.
- (d) If a written objection is filed as required in this section, the city council shall:
 - (1) Fix a date for a hearing on its resolution and the objection;
 - (2) Consider all evidence for and against the removal resolution at the hearing; and

(3) Determine if its resolution should be enforced or rescinded.

(e) Any person aggrieved by the determination of city council may appeal to the district court by:

(1) Giving notice of appeal to the city clerk within five days after the determination made by the city council; and

(2) Filing a petition in the district court within 20 days after the determination made by the city council. The district court shall hear the matter de novo and enter judgment in accordance with its findings.

(f) If the owner, occupant or agent in charge of the building, structure or premises fails to commence removing the building, structure, ruins, rubbish, wreckage or debris:

(1) Within ten days of being served a copy of the resolution or of the posting and publishing of the resolution; or

(2) Within five days of the determination by the city council that the resolution shall be enforced; or

(3) After the district court enters judgment sustaining the determination of the city council, the city may remove the building, structure, ruins, rubbish, wreckage or debris at the cost and expense of the owner. The reasonable cost of the removal shall constitute a lien against the building, structure, ruin, rubbish, wreckage or debris so removed and against the lot or parcel of land from which it was removed. The lien shall be foreclosed in the manner provided in NMSA 1978, §§ 3-36-1 through 3-36-6.

(g) The city may pay for the costs of removal of any condemned building, structure, wreckage, rubbish or debris by granting to the person removing such materials, the legal title to all salvageable materials in lieu of all other compensation.

(h) Any person or firm removing any condemned building, structure, wreckage, rubbish or debris shall leave the premises from which the material has been removed in a clean, level and safe condition, suitable for further occupancy or construction and with all excavations filled.

(Ord. No. 21-05, § 1, 6-10-2021)

Secs. 16-13—16-15. - Reserved.

ARTICLE II. - LITTER

Sec. 16-16. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

Authorized receptacle means a litter storage and collection receptacle as required and authorized by ordinance.

Commercial handbill means any printed or written matter, any sample pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter of literature:

- (1) Which advertises for sale of any merchandise, product, commodity, or thing; or
- (2) Which directs attention to any business or mercantile or commercial establishment or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales; or
- (3) Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit;
- (4) Which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor.

Garbage means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Litter means garbage, refuse, and rubbish and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

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

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

Private premises or land means any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, land without buildings, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building, or other structure.

Public place means any and all streets, sidewalks, boulevards, alleys or other public parks, sources, spaces, drainage channels, grounds and buildings.

Refuse means all putrescible and nonputrescible solid wastes (except body waste), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.

Rubbish means nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

Vehicle means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-17. - Litter in public places generally.

No person shall throw or deposit litter in or upon any street, sidewalk, or other public place within the city except in public receptacles or authorized private receptacles for collection, or in official city sanitary landfill.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-18. - Placement in receptacles so as to prevent scattering.

Persons placing litter in public receptacles or in authorized private receptacles shall do so in such manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or other public or private place.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-19. - Sweeping litter into gutters, etc.

No person shall sweep into or deposit in any gutter, street or other public or private place within the city the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk or driveways abutting their premises clean and free of litter. No person shall blow leaves or clippings into the gutter.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-20. - Merchant's duty to keep sidewalks free of litter.

No person owning or occupying a place of business shall sweep into or deposit in any gutter, street or other public or private place within the city the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying places of business within the city shall keep the sidewalk abutting their business premises clean and free of litter.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-21. - Litter thrown by persons in vehicles.

No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any private property, any street or other public place within the city.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-22. - Truck loads causing litter.

No person shall drive or move any truck or other vehicle within the city unless such vehicle is so constructed or loaded as to prevent any load or contents of litter from being blown or deposited upon any street, alley or other private or public place.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-23. - Litter in parks.

No person shall throw or deposit in any part within the city except in public receptacles and in such manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other private or public place. Where public receptacles are not provided, all such litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-24. - Litter in lakes or streams.

No person shall throw or deposit litter in any pond, lake, stream, flood control, storm drainage area, or any other body of water in a park or elsewhere in the city.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-25. - Littering from aircraft.

No person in an aircraft shall throw out, drop or deposit within the city any letter, handbill or any other object.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-26. - Depositing handbills on uninhabited or vacant premises.

No person shall throw or deposit any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-27. - Distribution of handbills on posted premises.

No person shall throw, deposit or distribute any commercial or noncommercial handbill upon or to any private premises, if required by any one thereon not to do so, or if there is placed on said premises in a conspicuous position near the entrance thereof a sign bearing the words "No Trespassing," "No Peddlers" or "Agents," "No Advertisement," or any similar notice, indicating in any manner that the occupants of said premises do not desire to be molested or have their right of privacy disturbed, or to have any such handbills left upon such premises.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-28. - Distribution of handbills at inhabited private premises.

No person shall throw, deposit or distribute any commercial or noncommercial handbill in or upon private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant, or other person then present in or upon such private premises; provided, however, that in case of inhabited private premises which are not posted, as provided in this chapter. Such person, unless requested by anyone upon such premises not to do so, shall have the authority to place or deposit any such handbill in or upon such inhabited private premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or sidewalks, streets, or other public places, and except that mailboxes may not be so used when so prohibited by federal postal laws or regulations.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-29. - Posting notices.

No person shall 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 or shade tree, or upon any public structure or building except as may be authorized or required by law.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-30. - Owner to maintain premises free of litter.

The owner or person in control of any private property shall at all times maintain the premises free of litter. This section shall not prohibit the storage of litter in authorized private receptacles for collection.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-31. - Litter of vacant lots.

No person shall throw or deposit litter on any open or vacant private property within the city whether owned by such person or not.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-32. - Littering private property declared nuisance.

Littering of private property, whether it be occupied, inhabited or vacant, by any means whatsoever and the distribution of handbills, unless done pursuant to an exception provided for in the ordinances of the city is hereby declared to be a nuisance. Such nuisance may be abated by imposing a penalty set forth in section 16-33 and by other such means as the governing body deems appropriate in the circumstances.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-33. - Penalties.

It is unlawful to litter as defined in this article.

(Ord. No. 21-05, § 1, 6-10-2021)

Secs. 16-34, 16-35. - Reserved.

ARTICLE III. - STORAGE OR ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE MOTOR VEHICLES

Sec. 16-36. - Violation; nuisance; exceptions.

- (a) No person shall park, store, leave or permit parking, storing or leaving of any motor vehicle of any kind which is in an abandoned, wrecked, dismantled, inoperative or partially dismantled condition, whether attended or not, upon any private property or between a curb and sidewalk or between a curb or lateral line of a roadway, and the adjacent property line within the city for a period of time in excess of 72 hours. The presence of an abandoned, wrecked, dismantled, inoperative or partially dismantled vehicle or parts thereof (except such parts which have been

reconstructed or converted for practical use) on both private property and within the city right-of-way (ROW), is hereby declared a public nuisance which may be abated in accordance with the provisions of this chapter.

(b) The provisions of this section shall not apply to:

- (1) Any vehicle within an enclosed area and out of public view on private property or to any vehicle held in connection with a business enterprise lawfully licensed by the city and properly operated in the appropriate business zone pursuant to the zoning laws of the city;
- (2) Any person who has obtained a permit for the restoration of a motor vehicle pursuant to this chapter while the vehicle is being restored or after restoration is complete. Proof of operable condition after restoration is required.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-37. - Permit; fee; limit.

Any person, upon payment of a fee of \$15.00 may obtain a permit for the restoration of a motor vehicle from the code enforcement office. The permit shall specify the type of vehicle to be restored, the location of the vehicle and the time allowed for restoration; provided, however, in no event shall the time allowed for restoration exceed six months. No more than one permit per location per year may be issued.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-38. - Notice for removal of nuisances.

Whenever it comes to the attention of the code enforcement officer that any nuisance, as defined herein, exists in the city, a notice in writing shall be served upon the occupant of the land where the nuisance exists or, in case there is no such occupant, then upon the owner of the property or his agent, notifying them of the existence of the nuisance and requesting its removal in the time specified in this chapter.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-39. - Owner of vehicle and owner/occupant of property responsible for removal; liable for cost of city removal.

Upon proper notice and an opportunity to be heard, the owner of the abandoned, wrecked, dismantled or inoperative vehicle and the owner or occupant of the private property on which the same is located, either or all of them, shall be responsible for its removal. In the event of removal and disposition by the city, the owner or occupant of the private property where same is located, shall be liable for the expense incurred.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-40. - Sufficient notice thirty days prior to compliance.

The code enforcement officer shall give notice of removal to the owner or occupant of the private property where the abandoned, wrecked, dismantled or inoperative vehicle is located at least 30 days before the time of compliance, which shall be set forth in the notice. It shall constitute sufficient notice when a copy of same is posted in a conspicuous place upon the private property on which the vehicle is located and duplicate copies are sent by certified mail to the owner or occupant of the private property at his last known address.

(Ord. No. 21-05, § 1, 6-10-2021)

Secs. 16-41—16-43. - Reserved.

Sec. 16-44. - Continued violation; removal by code enforcement officer; unlawful to interfere with removal.

If the violation described in the notice has not been remedied within the 30-day period of compliance, the code enforcement officer or his designee shall have the right to remove said motor vehicle from the premises. It shall be unlawful for any person to interfere with, hinder or refuse to allow such person or persons to enter upon the private property for the purpose of removing a vehicle under the provisions of this chapter.

(Ord. No. 21-05, § 1, 6-10-2021)

Secs. 16-45—16-60. - Reserved.

ARTICLE IV. - CHRONIC NUISANCES

Sec. 16-61. - Definitions.

The following terms shall be defined as follows in this article.

Nuisance event . Any of the following activities, behaviors, or conduct occurring on a premises:

- (1) Execution of a search warrant by local (city PD or sheriff's office), state, or federal law enforcement.
- (2) A finding of guilty by municipal or magistrate court of an individual cited or arrested at a location for the following municipal offenses or their state statute equivalence. The event date is the date of citation or arrest:
 - a. Battery, pursuant to section 10-3 of the City Code or its equivalent in New Mexico State Statute.

- b. Possession of drug paraphernalia, pursuant to section 10-7 of the City Code or its equivalent in New Mexico State Statute.
 - c. Disorderly house, pursuant to section 10-90 of the City Code or its equivalent in New Mexico State Statute.
 - d. Discharge of firearm, pursuant to section 10-103 of the City Code or its equivalent in New Mexico State Statute.
 - e. Negligent use of weapon, pursuant to section 10-104 of the City Code or its equivalent in New Mexico State Statute.
 - f. Owner to maintain premises free of litter, pursuant to section 16-30 of the City Code or its equivalent in New Mexico State Statute.
 - g. Storage of, etc. of inoperative motor vehicle, pursuant to section 16-36 of the City Code or its equivalent in New Mexico State Statute.
- (3) The following section 16 infractions shall be considered nuisance events if the governing body has passed a resolution requiring action for these violations listing the specific property. Furthermore, no more than one such action within a six-month period may be considered a triggering event. The date of the governing body action is the date of the event.
- a. Weeds, pursuant to section 16-4 of the City Code or any equivalent in New Mexico State Statute.
 - b. Dangerous building or debris, pursuant to section 16-11 of the City Code or its equivalent in New Mexico State Statute.
- (4) No more than one event within a 48-hour time period shall qualify as a triggering event.

Owner. The owner of the premises and his or her agents.

Premises. An individual dwelling unit, an apartment building (all units included as one premises), or an individual business premises and associated common areas.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-62. - Notice.

Whenever the city attorney determines that four or more nuisance events, as defined by this article, have occurred at a premises during a 12-month period, the city may notify the premises owner in writing. In calculating the requisite nuisance activities. The notice shall contain the street address or legal description sufficient to identify the premises, a description of the nuisance activities that have occurred at the premises, a public nuisances statement indicating that the cost of future enforcement may be assessed as a special charge against the premises, and a notice as to the processes of this article and the appeal rights of the owner. The notice shall be delivered through certified mail.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-63. - Abatement plan.

- (a) Any owner receiving notice pursuant to this section shall contact, whether in person or electronically, the city manager, or his/her designee, within ten days of receipt of such notice. The parties shall review the problems occurring at the property. Within ten days of this meeting, the owner shall submit to the city manager, or his/her designee, an abatement plan to end the nuisance activity on the property. The plan shall also specify a name, address, and telephone number of a person living within 60 miles of the property who can be contacted in the event of further police, fire, or inspection contact.
- (b) The city staff may provide assistance through its partnership agreements or provide access to resources, to the extent permitted by law, to contribute to the alleviation of the nuisance activities. The city, working with the individual shall make every effort to consider the context of the nuisance activity and make reasonable efforts to determine the extent of the property owner's liability in contributing to the activity and shall not seek administrative costs under section 16-80 where an owner is not liable for the nuisance activity.
- (c) To the extent possible, the city and the owner should seek to include any persons renting property from the owner in the meeting to include them in the abatement plan. Without a showing of liability on the part of renters, the abatement plan shall not consist solely of evicting renter of the property.
- (d) The failure of the property owner to respond to the certified mail shall not cause a delay in the enforcement process.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-64. - Additional nuisance activity.

Whenever the city determines that additional nuisance activity has occurred at a premises for which notice has been issued and that this nuisance activity has occurred not less than 15 days after notice has been issued, and that reasonable efforts have not been made to abate the nuisance activity, the city manager may calculate the cost of police response and enforcement for this and any subsequent nuisance activities and cause such charges and administrative costs to be assessed and collected as a special charge.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-65. - Concurrence of the governing body.

- (a) Prior to the issuance of any demand for payment under section 16-63, the governing body must approve a resolution of concurrence of the city manager's findings. Prior to approving a demand for payment against any property, evidence, which may be attached to any resolution, should be

provided to the governing body of the following:

- (1) An abatement plan, which had been agreed upon by the owner, and evidence of a subsequent nuisance event; or
 - (2) The final version of an abatement plan proposed by the city, in the event that the owner refused, and evidence of a subsequent nuisance event; or
 - (3) Reasonable attempts to locate a responsible owner and provide notice as required under this chapter and evidence of a subsequent nuisance event following reasonable attempts at notice.
- (b) "Refused" in this instances means either of the following after having received adequate notice as provided for in this article:
- (1) Failing to present an abatement plan or provide input into the construction of an abatement plan; or
 - (2) Failing to respond via any means.

(Ord. No. 21-05, § 1, 6-10-2021)

Sec. 16-66. - Appeal.

Appeal of the determination of the city manager pursuant to any enforcement action, may be submitted to the city clerk within 30 days of the assessment of the first special charge.

(Ord. No. 21-05, § 1, 6-10-2021)