

City of Rio Communities, New Mexico

Ordinance # 2020-XX

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CHAPTER 11: HEALTH AND SAFETY

ARTICLE 6: NUISANCE ABATEMENT

CHAPTER 11 HEALTH AND SAFETY

ARTICLE 6 NUISANCE ABATEMENT

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11-6-1 NUISANCE

- A. For the purposes of this chapter the word "nuisance" is defined as any person within the City doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, where such act, omission, condition or thing either:
1. Injures or endangers the comfort, repose, health, or safety of others; or
 2. Offends decency; or
 3. Is offensive to the senses; or
 4. Unlawfully interferes with, obstructs, or tends to obstruct or renders dangerous for passage, any public or private street, highway, sidewalk, stream, ditch, or drainage; or
 5. In any way renders other persons insecure in life or the use of property; or
 6. Essentially interferes with the comfortable enjoyment of life and property or tends to depreciate the value of the property of others.

- B. A public nuisance consists of knowingly creating, performing, or maintaining anything affecting any number of citizens without lawful authority that is either:
 - 1. Injurious to public health, safety, morals, or welfare; or
 - 2. Interferes with the exercise and enjoyment of public rights, including the right to use public property.

11-6-2 ENUMERATION OF NUISANCE ITEMS

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property in the City of any of the following items, conditions or actions are defined and declared to be and found to constitute a nuisance; provided however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive.

- A. Weeds and other vegetation that are rank, noxious, poisonous, harmful, unhealthful, or any growth whatsoever of an offensive nature or which is deleterious to health and safety; or [can restricting weed height be defended as a "safety issue?"]
- B. Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber, or other things; or [how is accumulation determined?]
- C. Accumulation of motor vehicles not in operating condition; or
- D. Any condition which provides harborage for rats, mice, snakes and other vermin, or provides a vector for the transmission of infectious disease between humans or from animals to humans; or
- E. Any building or other structure in such a dilapidated condition that it is unfit for human habitation or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located; or
- F. All unnecessary or unauthorized noises and annoying vibrations, including animal noises; or
- G. All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes that give rise to the emission or generation of such odors and stenches; or
- H. The carcasses of animals or fowl not disposed of within a reasonable time after death; or

- I. The pollution of any public well or cistern, stream, lake, canal, or body of water by sewage, dead animals, creamery or other industrial wastes or other substances; or
- J. Any building, structure or other place or location where any activity that is in violation of local, state or federal law is conducted, performed or maintained; or
- K. Any **accumulation** of stagnant water permitted or maintained on any lot or piece of ground.

11-6-3 NUISANCE PROHIBITED

It is unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance. Any violation of this section shall be deemed a misdemeanor and subject to the penalties set forth in Section 7 of this Ordinance or, in the alternative, remedied by the City with a lien placed on the property for all costs assumed by the City pursuant to Section 9 of this Ordinance.

11-6-4 RESPONSIBILITY OF PROPERTY OWNER

Each property owner within the City, whether a natural person or other legal entity, shall be responsible, under the provisions of this chapter, for each individual tract of property owned and the owner's responsibility established herein will extend to abutment of other adjoining property lines. When any portion of the property abuts on a public road or alley, the property owner's responsibility shall extend to the center of the road or alley; provided however, that this section shall not restrict in any manner the maintenance of the full alley and street by the street department. (**jurisdictional authority**).

11-6-5 NOTICE TO ABATE

Whenever a nuisance is found to exist within the City or within the City's extraterritorial jurisdiction, an officer of the City shall give written notice to the owner or occupant of the property upon which such nuisance exists or upon the person causing or maintaining the nuisance.

11-6-6 CONTENTS OF NOTICE

The notice to abate a nuisance issued under the provisions of this chapter shall contain:

- A. An order to abate the nuisance or to request a hearing within a stated time, which shall be reasonable under the circumstances; and
- B. The location of the nuisance, if the same is stationary; and
- C. A description of the alleged nuisance; and

- D. A statement of acts necessary to abate the nuisance; and
- E. A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the City will abate such nuisance and assess the cost thereof against such person and any applicable property.

11-6-7 COMPLAINT AND PENALTIES

- A. In the event the owner or occupant of the property where the nuisance violation of this chapter exists, has failed within the prescribed time, to abate the nuisance in accordance with the Notice described in Section 7 of this Ordinance, then any city police officer, building inspector/code enforcement officer or fire marshal may file a complaint charging violation of this chapter with the municipal court demanding that the owner of the property, or the occupant thereof, or both, be held to answer to the court for the violation of this chapter.
- B. Upon conviction thereof, the owner shall be subject to penalty as provided in Title 1, Chapter 4 of this code, and each day on which such violation continues shall constitute a separate offense. These penalties shall be in addition to payment of any city costs for cutting or removal, or both.
- C. When judgment is against the defendant in an action to abate a public nuisance, he shall be adjudged to pay all court costs and a reasonable fee for the complainant's attorney, when the suit is not prosecuted exclusively by the City attorney.
- D. In the alternative to a complaint filed in municipal court, pursuant to NMSA 1978, Section 30-8-8(B), A civil action to abate a public nuisance may be brought, by verified complaint in the name of the state without cost, by any public officer or private citizen, in the district court of the county where the public nuisance exists, against any person, corporation or association of persons who shall create, perform or maintain a public nuisance.

11-6-8 GENERAL PENALTY FOR VIOLATIONS OF CHAPTER/CONTINUING VIOLATIONS

- A. Whenever in this chapter an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor or a petty misdemeanor, or whenever in this chapter the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision or the failure to perform any such act shall be punishable by a fine of not exceeding three hundred dollars (\$300.00) or by imprisonment not to exceed ninety (90) days or by both such fine and imprisonment in the discretion of the court.

- B. Each day any such violation or failure to perform such act shall continue shall constitute a separate offense and a separate violation of an ordinance of this City, unless otherwise specifically provided.

11-6-9 ALTERNATIVE METHOD OF ABATEMENT

- A. As an alternative to filing a Complaint pursuant to Section 8 of this Ordinance, or in the event that a person is convicted of violating this article and still refuses to remove the nuisance, an officer of the City may proceed to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof.
- B. Any and all costs incurred by the City in the abatement of a nuisance under the provisions of this chapter shall constitute a lien against the property upon which such nuisance existed, which lien shall be filed, proven and collected as provided for by law. Such lien shall be notice to all persons from the time of its recording and shall bear interest at the legal rate thereafter until satisfied.

11-6-10 EMERGENCY ABATEMENT

- A. Notwithstanding any other provision in this code if, in the opinion of the inspector, the conditions at a property constitute an imminent hazard, the inspector may order immediate abatement of the hazard without notice. Such abatement of an imminent hazard shall be limited to the minimum work necessary to remove the hazard, and may include disconnection of utilities, securing of the structures or emergency cleaning of the property to abate any violations found.
- B. The city shall pay the cost and expense of such abatement from any appropriation made available for that purpose.
- C. A lien shall be recorded with the Valencia County Clerk's Office for all the costs incurred by the city as a result of abating the property.
- D. Whenever the inspector finds that any structure contains an imminent hazard or health hazard, the inspector may declare such structure unfit for human occupancy and order it to be vacated or to remain vacant. A structure declared unfit for occupancy and ordered vacated or to remain vacant under the provisions of this section shall not be leased, rented, or occupied, until it has been inspected and deemed fit for occupancy by the city. The city shall reinspect, for the purpose of re-occupancy, within three business days of the receipt of a written request by the owner, their agent or responsible party.

11-6-11 CONFLICTING PROVISIONS

Any city ordinance or part of ordinance which is in conflict with the provisions of this article is hereby superseded to the extent that this article provides more specific standards or stricter standards of compliance.

CHAPTER 11 HEALTH AND SAFETY

ARTICLE 7 DANGEROUS BUILDINGS

SECTION 1 DANGEROUS BUILDING OR DEBRIS

SECTION 2 CONFLICTING PROVISIONS

11-7-1 DANGEROUS BUILDING OR DEBRIS

- A. Whenever any building or structure is **ruined, damaged and dilapidated**, or any premise is covered with ruins, rubbish, wreckage or debris, the governing body of the City of Rio Communities may, by resolution find that the ruined, damaged and dilapidated building, structure or premise is a menace to the public comfort, health, peace or safety and requires the removal of the building, structure, ruins, rubbish, wreckage or debris from the municipality.
- B. A copy of the resolution shall be served on the owner, occupant, or agent in charge of the building, structure or premise. If the owner, as shown by the real estate records of the county clerk, occupant or agent in charge of the building, structure or premise cannot be served within the municipality, a copy of the resolution shall be posted on the building, structure or premise and a copy of the resolution shall be published one time **per NMSA 1798, Section 14-11-2**. [Requirements for publication of legal notice or advertisement]
- C. Within ten (10) days of the receipt of a copy of the resolution or 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 governing body of the municipality.
- D. If a written objection is filed as required in this section, the governing body shall:
 1. Fix a date for a hearing on the resolution and the objection; and
 2. Consider all evidence for and against the removal resolution at the hearing; and

3. Determine if the resolution should be enforced or rescinded.
- E. Any person aggrieved by the determination of the governing body may appeal to the district court by:
1. Giving notice of appeal to the governing body within five (5) days after the determination is made by the governing body; and
 2. Filing a petition in the district court within twenty (20) days after the determination made by the governing body. 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 premise fails to commence removing the building, structure, ruins, rubbish, wreckage or debris:
1. Within ten (10) days of being served a copy of the resolution or the posting and publishing of the resolution; or
 2. Within five (5) days of the determination by the governing body that the resolution shall be enforced; or
 3. After the district court enters judgment sustaining the determination of the governing body, the City of Rio Communities 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, Sections 3-36-1 through 3-36-6.
- G. The municipality 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.

11-7-2 CONFLICTING PROVISIONS

Any city ordinance or part of ordinance which is in conflict with the provisions of this article is hereby superseded to the extent that this article provides more specific standards or stricter standards of compliance.

