

## ORDINANCE 1124

### AN ORDINANCE AMENDING CHAPTER 7.04 NUISANCE IN GENERAL; 7.06, OUTDOOR AUTOMOTIVE STORAGE; 7.08, DANGEROUS BUILDINGS; AND ADDING CHAPTER 7.10 VACANT BUILDINGS OF THE TUCUMCARI MUNICIPAL CODE.

- Title 7 - NUISANCES

#### Chapters:

- Chapter 7.04 - NUISANCES IN GENERAL
- Chapter 7.06 – Outdoor Automotive Storage
- Chapter 7.08 – Dangerous Buildings
- Chapter 7.10 – Vacant Buildings

#### Sections:

- 7.04.010 - Definitions.

For the purposes of this chapter, the following words and phrases have the meanings respectively ascribed to them by this section:

**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.

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

**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.

**DANGEROUS BUILDING** - as used in this chapter is defined to mean and to include:

1. Any building, shed, fence or other manmade structure which is dangerous to the public health because of its condition, and which may cause or aid in the spread of disease, or injury to the health of the occupant(s) of it or neighboring structures;
2. Any building, shed, fence or other manmade structure which because of faulty construction, age, or lack of proper repair or any other cause, is especially liable to fire and constitutes or creates a fire hazard.
3. Any building, shed, fence or other manmade structure which, by reason of faulty construction or other cause, is liable to cause injury or damage by collapsing or by collapse or fall of any part of such structure; and
4. Any building, shed, fence or other manmade structure which, because of its condition or because of lack of doors or windows, is available to and frequented by people who are not the lawful occupants of such structure, or, which constitutes an attractive nuisance or which would invite or create curiosity which could result in individuals entering said building.

**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.

**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.

**FIRE HAZARD** - Any thing 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.

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

**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 well being 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.

**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.

**MESQUITE** - means the untended growth of mesquite bushes which are naturally suited to grow to extremely high levels in density and number if left unchecked. Mesquite bushes which are cultivated or tended in such a fashion as to exhibit the natural beauty and uniqueness of the bush shall not constitute a nuisance. The unabated natural growth of mesquite bushes will not be allowed in the city, and shall constitute a nuisance.

**NUISANCE** - is defined as any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist; which 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 sense; 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 to 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.

**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** - means the owner of record as shown by the most current tax rolls of the county treasurer.

**PUBLIC NUISANCE** - 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.

**REFUSE** - Includes, but is not limited to all putrescible and non-putrescible 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.

**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 Quay 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.

**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.

**TRASH** - means any refuse, litter, ashes, leaves, debris, tree limbs, brush, paper, combustible materials, rubbish, offal, waste, or matter of any kind or form, which is uncared for, discarded or abandoned.

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

**WEEDS** - includes, but is not limited to, all vegetation at any stage of maturity which:

1. Exceeds twelve (12) inches in height, except healthy trees, shrubs or produce for human consumption grown in a tended and cultivated garden, unless such trees and shrubbery, by their density or location, constitute a detriment to the health, benefit and welfare of the public and community, or a hazard to traffic, or create a fire hazard to the property, or otherwise interfere with the mowing of the weeds;
2. Regardless of height, harbors, conceals or invites deposits or accumulation of refuse or trash;
3. Gives off unpleasant or noxious odors;
4. Constitutes a fire or traffic hazard; or
5. Is dead or diseased.

The term "weed" does not include tended crops grown for agricultural use, which are planted more than sixty (60) feet from a parcel, used for other than agricultural uses. The "approved

methods" of controlling weeds are mowing, cutting, digging or other methods designed to remove the weeds but not disturb other vegetation or unnecessarily disturb the soil.

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

*(Ord. 992 § 6 (part), 2004)*

- **7.04.020 - Illustrative enumeration**

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

1. Noxious weeds and other rank vegetation;
2. Mesquite bushes;
3. Accumulation of rubbish, trash, refuse, litter, garbage, junk and other abandoned materials, metals, lumber or other things;
4. Any condition that provides harborage for rats, mice, snakes and other vermin;
5. All unnecessary or unauthorized noises and annoying vibrations, including animal noises;
6. All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches;
7. The carcasses of animals or fowl not disposed of within a reasonable time after death;
8. The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances;
9. Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained;
10. Any accumulation of stagnant water permitted or maintained on any lot or piece of ground;
11. Dense smoke, noxious fumes, gas, soot or cinders in unreasonable quantities.

*(Ord. 992 § 6 (part), 2004)*

- **7.04.030 - Prohibited.**

It is unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance. Violation of this section shall be subject to the criminal penalties set forth in Chapter 7.08.

*(Ord. 992 § 6 (part), 2004)*

- **7.04.040 - Responsibility of property owner.**

Each property owner within the city, whether a natural person or a business entity, is responsible under the provisions of this chapter for each individual tract of property owned and his or her 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 is from the back of the curb to the center of the alley; however, this shall not restrict in any manner the maintenance of the full alley by the city street department.

*(Ord. 992 § 6 (part), 2004)*

- **7.04.050 - Notice of violation.**

Whenever a nuisance is found to exist within the city, the code enforcement officer or some other duly designated 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.

*(Ord. 992 § 6 (part), 2004)*

- **7.04.060 - Contents of notice.**

The notice of violation issued under the provisions of this chapter shall contain:

1. An order to abate the nuisance or to request a hearing within a stated time, which is reasonable under the circumstances;
2. The location of the nuisance, if the same is stationary;
3. A description of what constitutes the nuisance;
4. A statement of acts necessary to abate the nuisance;
5. 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 such cost to be recorded as a municipal lien against the offending property.

Pursuant to Section 3-18-17, NMSA, 1978 a person who fails to abate a nuisance within the time as provided in the notice shall be cited and be subject to a fine in the Tucumcari Municipal Court as provided in Section 7.04.100. The person so cited shall have the option of paying the fine within the time specified on the citation at the municipal court upon entering a plea of guilty and upon waiving an appearance of court, or by depositing any bail required as provided in the rules of procedure for the municipal court, and upon a plea of not guilty, is entitled to a trial as authorized by law.

*(Ord. 992 § 6 (part), 2004)*

- **7.04.070 - Service of notice.**

The notice to abate a nuisance shall be served as any other legal process may be served pursuant to law. A notice of violation warning for any offense governed by this subchapter shall also serve as warning notice to the violator that subsequent offenses, within a 12-month period, shall result in a Court citation in lieu of additional notices of violation.

*(Ord. 992 § 6 (part), 2004)*

- **7.04.080 - Removal by city.**

A.

Inspections. The city compliance officer is authorized to inspect any private property or private premises wherein he or she has cause to suspect that unlawful growth or accumulation of weeds may exist. The city compliance officer or his or her duly authorized representatives, with the permission of the owner of the real property may at reasonable times enter upon and maybe given access to any property.

1.

Upon the basis of such inspections, if the city compliance officer finds that this chapter has not been complied with, or that a health hazard exists, he or she shall give written notification to the owner, tenant, lessee, manager or occupant, or agent, servant, representative or any employee of any such owner, tenant, lessee, manager or occupant having charge of or control of the lot or tract where the conditions exist to properly correct such conditions within a designated period of time which shall not be less than ten (10) days.

2.

Upon the failure, neglect or refusal of any owner, tenant, lessee, manager or occupant, or agent, servant, representative or employee or any such owner, tenant, lessee, manager or occupant, to properly correct such conditions within the time prescribed or within five days after the date of such notice in the event the same is returned to the post office as undeliverable, if the notice is served by mail, the city manager may contract for the correction of the unlawful growth or accumulation of weeds or order its correction by the city at the expense of the owner, tenant, lessee, manager or occupant, or agent, servant, representative or employee of any such owner, tenant, lessee, manager or occupant in charge of the lot or tract.

3.

The cost of such correction shall be the actual cost of correction (man hours required, expendable material used, and vehicle hours) plus one hundred fifty dollars (\$150.00) to cover related costs of inspection, billing, and initial filing of a lien on the property as described within this

subsection. In addition the cost of such correction shall be a lien on the lot or tract, and shall remain in full force and effect for the amount due plus interest (at the rate of eight percent per annum from the date of the filing of the lien until paid) and all other costs, including attorney fees. Such lien shall be enforced and foreclosed according to applicable state law.

B.

Emergency Condition. Where the city compliance officer finds that immediate measures are required to alleviate the unlawful growth or accumulation of weeds, the city manager may waive the ten (10) day notification period in order to take whatever steps are necessary for correction of the condition.

*(Ord. 992 § 6 (part), 2004)*

- **7.04.090 - Alternative method of abatement.**

A.

Except as provided in this title, an action for the abatement of a public nuisance shall be governed by the general rules of civil procedure.

B.

When judgment is against the defendant in an action to abate a public nuisance, he or she shall be adjudged to pay all court costs and a reasonable fee for the complaint's attorney

*(Ord. 992 § 6 (part), 2004)*

- **7.04.100 - Violations—Penalties.**

- A. If, after notice of violation, any responsible party of any premises within the city shall continue to maintain a public nuisance, the code enforcement officer shall proceed to issue a citation to the responsible party. The citation shall have fees associated as follows: \$100 for a first offense; \$200 for a second offense; \$300 for a third offense; and \$500 for each subsequent offense, fees will be in addition to applicable court costs. In addition to issuance of a citation, the city may proceed to cause the thing or things described in the notice as a nuisance to be removed or abated from the lot or parcel of ground, and the cost thereof including any and all expenses and reasonable attorney's fees so incurred shall be charged to the responsible party for the lot or parcel of ground in which the nuisance was located. Should the responsible party not pay the fees invoiced, the city shall assess a lien against the lot or parcel of ground in which the nuisance was located. The city shall enforce and collect the assessment in accordance with the provisions of the existing laws of the state of New Mexico.
- B. If, after due notice, any person, persons or corporation being the owner or tenant of any premises in the city shall continue to maintain such premises in a manner described in this chapter, shall be convicted of maintaining a nuisance the following minimum fines shall be imposed and shall not be suspended or deferred:
  - i. First Conviction \$50.00
  - ii. Second Conviction \$75.00
  - iii. Third Conviction \$100.00
  - iv. Fourth Conviction \$200.00
  - v. Fifth and subsequent conviction \$400.00
  - vi. Court Fees \$29.00
- C. Incarceration
  - a. Notwithstanding any other provision of this municipal code, any person upon whom any fine or penalty is imposed may, upon order of the court convicting him or her, may be committed to the county jail, municipal jail, detention facility or other place provided by the City of Tucumcari for the incarceration of offenders until the fine or penalty is paid in full. The period of incarceration shall not exceed sixty (60) days for any one offense except as authorized in subsection C of section 3-17-1, NMSA, 1978.

- b. Every person so committed shall work for the municipal corporation, and such labor as his or her strength will permit within or without the jail or other place provided for the incarceration not exceeding ten (10) hours each working day. Each offender shall be credited with eight times the federal minimum wage per day in reduction of any fine.
- c. The municipal judge shall impose court costs and fees as provided in section 35-13-11 for any conviction of any person who violates municipal ordinances as provided herein.

*(Ord. 992 § 11, 2004)*

- **Chapter 7.06 - OUTDOOR AUTOMOTIVE STORAGE**

**Sections:**

- **7.06.010 - Construction.**

The provisions of this chapter shall be construed as being supplementary to any sections of any codes relating to rubbish, litter, garbage, refuse, trash or junk and shall not be construed to permit the parking or placing of dismantled, partially dismantled or inoperable motor vehicles on any street, public way or public property.

*(Ord. 992 § 8 (part), 2004)*

- **7.06.030 - Nuisance declared.**

The presence of a dismantled, partially dismantled, or inoperable vehicle or parts thereof on any occupied or unoccupied land within the city limits in violation of the terms of this section is declared to be a public nuisance.

*(Ord. 992 § 8 (part), 2004)*

- **7.06.040 - Prohibited acts—Presumption of abandonment.**

- A. No person shall abandon any vehicle on any highway within the city. It shall be presumed that any vehicle, which has been left at any place on a highway within the city for a period of more than seventy-two (72) hours consecutively, is an abandoned vehicle.
- B. No person shall park or stop any vehicle on any street or alley within the city, whether or not such vehicle is abandoned, for a period of more than thirty (30) days consecutively, unless said vehicle is operational, properly licensed and parked in front of the owner's property.

*(Ord. 992 § 8 (part), 2004)*

- **7.06.050 - Same—Prohibited on streets.**

No person shall leave any partially dismantled, inoperable, wrecked, junked or discarded vehicle on any street or highway within the city.

*(Ord. 992 § 8 (part), 2004)*

- **7.06.060 - Same—Prohibited on property.**

No person in charge or control of any property within the city, whether as owner, tenant, occupant, lessee or otherwise, shall allow any partially dismantled, inoperable, wrecked, junked or discarded vehicle to remain on such property longer than sixty (60) days unless such vehicle is located in the back yard of such property and the area is maintained in such a manner that it does not constitute a health, safety or fire hazard and is effectively screened from public view by means of a solid six foot fence. This chapter shall not apply with regard to a vehicle in an enclosed building, a vehicle on the premises of a business enterprise operated in a lawful place and manner, when necessary to the operation of such business enterprise; or to any motor vehicle in an operable condition specifically adopted or designed for operation on drag strips, raceways, or any motor vehicle retained by the owner for antique collection purposes. An antique motor

vehicle for collection purposes is any motor vehicle twenty-five (25) years of age or older from the date of manufacture of such vehicle. Any vehicle shall be parked or stored in an orderly manner; or a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city.

*(Ord. 992 § 8 (part), 2004)*

- **7.06.070 - Notice of violation.**

Should any police officer or other employee of the city observe any violation of Section 7.06.050 or 7.06.060, or should any such police officer or other employee of the city observe any vehicle which has been parked or stopped upon a street or alley in excess of thirty (30) days in violation of Section 7.06.040, it is his or her duty to notify the police department, and thereupon the police department shall serve upon either the owner of the vehicle involved or upon the owner or occupant of the property involved, a notice in a form to be supplied by the chief of the police department, which notice shall command the recipient thereof to cause any such violation of this chapter to terminate within a period not in excess of thirty (30) days.

*(Ord. 992 § 8 (part), 2004)*

- **7.06.080 - Impounded vehicles.**

In the event of failure to comply with any written notice issued pursuant to Section 7.06.070, the chief of the police department, or any member of the police department of the city designated by him or her, is authorized to remove or have removed any vehicle left at any place within the city to which a notice to comply has been issued. Any such impounded vehicle shall be retained until claimed by its owner or disposed of in accordance with law. Possession of any such impounded vehicle shall not be returned to its owner unless or until the owner has paid all costs of removal and storage.

*(Ord. 992 § 8 (part), 2004)*

- **7.06.090 - Police department powers and duties.**

The chief of the police department, or any other employee of the city designated by him or her, is authorized to cause the removal of any abandoned vehicle from the place where it is abandoned to the nearest garage or other place of safety. Whenever an officer causes the removal of an abandoned vehicle from a street or alley as authorized in this section, the officer shall immediately send or cause to be sent a written report of such removal by mail to the state department whose duty it is to register vehicles, and shall file a copy of such notice with the proprietor of any public garage in which the vehicle may be stored. The police department shall run a records check on the abandoned vehicle to determine the name of the last known owner or owners. The police department shall send by certified mail a citation to the registered owner or owners of the impoundment or removal of their vehicle and affording them a right to hearing, as soon as in immediately practicable in the municipal court and to allow for the posting of any bonds or such other conditions that will allow for the immediate release of the said vehicle. Any vehicle impounded pursuant to the provisions of this section may be reclaimed by its rightful owner upon payment of all costs of removal and storage.

*(Ord. 992 § 8 (part), 2004)*

- **7.06.100 - Violations—Penalties.**

A. If, after notice of violation, any responsible party of any premises within the city shall continue to maintain a public nuisance, the code enforcement officer shall proceed to issue a citation to the responsible party. The citation shall have fees associated as follows: \$100 for a first offense; \$200 for a second offense; \$300 for a third offense; and \$500 for each subsequent offense, fees will be in addition to applicable court costs. In addition to issuance of a citation, the city may proceed to cause the thing or things described in the notice as a nuisance to be removed or abated from the lot or parcel of ground, and the cost thereof including any and all expenses and reasonable attorney's fees so incurred shall be charged to the

responsible party for the lot or parcel of ground in which the nuisance was located. Should the responsible party not pay the fees invoiced, the city shall assess a lien against the lot or parcel of ground in which the nuisance was located. The city shall enforce and collect the assessment in accordance with the provisions of the existing laws of the state of New Mexico.

- B. If, after due notice, any person, persons or corporation being the owner or tenant of any premises in the city shall continue to maintain such premises in a manner described in this chapter, shall be convicted of maintaining a nuisance such person, persons or corporation shall be fined in addition to other costs previously stated a sum not to exceed five hundred dollars (\$500.00) or less than twenty-five dollars (\$25.00) or imprisoned in the county jail not to exceed ninety (90) days or both such fine and imprisonment.

*(Ord. 992 § 11, 2004)*

- **Chapter 7.08 - DANGEROUS BUILDINGS**

**Sections:**

**7.08.020 - Prohibition.**

It is unlawful to maintain or permit the existence of any dangerous building in the city or the failure to repair, remodel or renovate building so designated or moved within the city; and it is unlawful for the owner, occupant, or person in custody of any dangerous building to permit the same to remain in a dangerous condition, or to occupy such building or permit it to be occupied while it is or remains in a dangerous condition.

*(Ord. 992 § 10 (part), 2004)*

- **7.08.030 - Abatement.**

Whenever the police chief, the fire chief, or the city manager is of the opinion that any building or structure in the city is a dangerous building and violates a specific code, that official shall file a written statement to the effect with the code enforcement officer. The code enforcement officer shall thereupon cause written notice to be served upon the legal owner of record thereof, and upon the occupant thereof, if any, by registered mail or by personal service. Such notice shall state that the building has been declared to be in a dangerous condition, and that such dangerous condition(s) must be removed or remedied by repairing or altering the building or by demolishing it; and that the condition must be remedied at once. Such notice may be in the following terms:

To \_\_\_\_\_ owner-occupant of premises, of the premises known and described as \_\_\_\_\_ You are hereby notified that \_\_\_\_\_ (describe building) on the premises above-mentioned has been determined to be a nuisance and a dangerous building after inspection by \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

The cause or causes for this decision are (here insert facts as to the dangerous conditions).

You must start to remedy this condition or demolish the building within ten (10) days after your receipt of this letter, and have the same completed within ninety (90) days, or the City of Tucumcari may proceed to do so or have the same done. Any and all expenses including reasonable attorney's fees so incurred will be assessed against you and collected by legal means.

*(Ord. 992 § 10 (part), 2004)*

- **7.08.040 - Appeal.**

Any person who has been issued a notice that a building or structure is in a dangerous condition, shall have the right to an appeal from the decision directly to the city commission within ten (10)

days from the date that the notice was served. The city commission shall by affirmative majority vote either to uphold the action of the code enforcement officer or shall overrule the same.

*(Ord. 992 § 10 (part), 2004)*

• **7.08.050 - Violations—Penalties.**

- A. If, after notice of violation, any responsible party of any premises within the city shall continue to maintain a public nuisance, the code enforcement officer shall proceed to issue a citation to the responsible party. The citation shall have fees associated as follows: \$100 for a first offense; \$200 for a second offense; \$300 for a third offense; and \$500 for each subsequent offense, fees will be in addition to applicable court costs. In addition to issuance of a citation, the city may proceed to cause the thing or things described in the notice as a nuisance to be removed or abated from the lot or parcel of ground, and the cost thereof including any and all expenses and reasonable attorney's fees so incurred shall be charged to the responsible party for the lot or parcel of ground in which the nuisance was located. Should the responsible party not pay the fees invoiced, the city shall assess a lien against the lot or parcel of ground in which the nuisance was located. The city shall enforce and collect the assessment in accordance with the provisions of the existing laws of the state of New Mexico.
- B. If, after due notice, any person, persons or corporation being the owner or tenant of any premises in the city shall continue to maintain such premises in a manner described in this chapter, shall be convicted of maintaining a nuisance such person, persons or corporation shall be fined in addition to other costs previously stated a sum not to exceed five hundred dollars (\$500.00) or less than twenty-five dollars (\$25.00) or imprisoned in the county jail not to exceed ninety (90) days or both such fine and imprisonment.

*(Ord. 992 § 11, 2004)*

## 7.09 – Vacant Buildings

- **7.09.010 – Intent**

A. Vacant buildings throughout the City are being neglected and are not being cleaned up or maintained for years by owners or agents in control of the properties, which are significantly reducing the attractiveness of the City and creating public nuisances in business and family neighborhoods around Tucumcari.

B. Vacant buildings throughout the City are resulting in negative community impacts contributing to neighborhood deterioration, reducing property values and are contrary to providing safe, clean, livable and healthy communities for families and businesses.

C. The purpose of this chapter is to ensure that owners' responsibilities to clean up and maintain vacant properties are performed in a timely and consistent manner.

D. The provisions of this section shall apply to all Property within the City of Tucumcari which falls within the zoning classification of C1, C2, I1, I2, and the Route 66 Overlay Zone.

- **7.09.020 - Declaration of nuisance**

Vacant buildings that are not maintained and licensed in conformity with this chapter are declared a public nuisance.

- **7.09.030 - Definitions**

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

**OWNER** - Includes any person that holds record title to the property and any person entitled under any agreement to the control or direction of the management or disposition of the building or premises or of any part of the building or premises where the violation in question occurs.

**VACANT BUILDING** - A residential or commercial building which is lacking habitual presence of natural persons who have a legal right to be on the premises, or at which substantially all lawful business operations or residential occupancy has ceased. Residential property shall not be deemed vacant if it has been used as a residence by a person entitled to possession for a period of at least three months within the previous nine months and a person entitled to possession intends to resume residing at the property. Multifamily residential property containing five or more dwelling units shall be considered vacant when substantially (60%) all of the dwelling units are unoccupied. Lodging and multi-unit commercial properties shall be considered vacant when substantially (60%) of the units are unfit for use or unoccupied. Notwithstanding the foregoing, if the City Manager determines that a substantial, unoccupied portion of an otherwise occupied structure has the potential for becoming a nuisance or having a negative effect on the neighborhood, the City Manager may notify the property owner that a vacant building maintenance license shall be required for the unoccupied portion of the otherwise occupied building. If a vacant building is used for the storage of materials related to a commercial enterprise, the owner must possess a valid business license consistent with said business. If stored materials are not related to a commercial enterprise and determined by the City Manager or designee to be a nuisance, fire hazard or having a negative effect on the neighborhood, the owner may not obtain a vacant building maintenance license until such time as the unacceptable conditions are addressed.

- **7.09.040 - Vacant building maintenance license; maintenance standards for vacant buildings.**

A. Application. Application for a vacant building maintenance license shall be made on a form provided by the City Manager and verified by the owner.

B. Inspection.

(1) Inspection by City. The City Manager shall cause an inspection of the premises for the purpose of determining that it will be safe for entry by firefighters and police officers in time of emergency, and that the building complies with the vacant building maintenance standards set forth in 7.09.040D. If the building does not so comply, the City Manager or

designee shall promptly specify the deficiencies and may specify the time for completion of the work. The City Manager may conditionally grant a license while the owner completes the work necessary for the building to comply with the standards set forth in 7.09.040D.

- (2) Inspection by Assessor's Office. The City Manager shall coordinate an inspection of the premises with the Quay County Assessor's Office for the purpose of determining proper valuation and assessment of stored materials.
- C. Issuance. The City Manager or designee shall issue a vacant building maintenance license on being satisfied after having inspected the building that the building is in compliance with the vacant building maintenance standards set forth in 7.09.040D; otherwise, the City Manager or designee shall deny the license or may conditionally grant the license while the owner completes the work necessary to comply with the standards.
- D. Vacant building maintenance standards.
  - (1) Building openings. Doors, windows, areaways and other openings are weathertight and secured against entry by birds, vermin and trespassers. Missing or broken doors, windows and opening coverings must be replaced or covered with one-half-inch CDX plywood, painted grey, weather protected, and tightly fitted to the opening and secured by screws or bolts.
  - (2) Roofs. The roof and flashings are sound, tight, will not admit moisture, and drained to prevent dampness or deterioration in the walls or interior.
  - (3) Drainage. The building storm drainage system is adequately sized, installed in an approved manner, functional and discharged in an approved manner.
  - (4) Building structure. The building is maintained in a good repair, structurally sound, free from debris, rubbish and garbage, and sanitary, so as not to pose a threat to the public health or safety.
  - (5) Structural members. The structural members are free of deterioration and capable of safely bearing imposed dead and live loads.
  - (6) Foundation walls. The foundation walls are plumb, free from open cracks and breaks, and verminproof.
  - (7) Exterior walls. The exterior walls are free of holes, breaks, and loose or rotting materials. Exposed metal and wood surfaces are protected from the elements and against decay or rust by application of weather-coating materials, such as paint or similar surface treatment as needed or determined by the City Manager or designee.
  - (8) Decorative features. The cornices, belt courses, corbels terra cotta trim, wall facings and similar decorative features are safe, anchored, and in good repair. Exposed metal and wood surfaces are protected from the elements and against decay or rust by application of weather-coating materials, such as paint or similar surface treatment as needed or determined by the City Manager or designee.
  - (9) Overhanging extensions. All balconies, canopies, marquees, signs, metal awnings, stairways, fire escapes, standpipes, exhaust ducts and similar features are in good repair, anchored, safe and sound. Exposed metal and wood surfaces are protected from the elements and against decay or rust by application of weather-coating materials, such as paint or similar surface treatment as needed or determined by the City Manager or designee.
  - (10) Chimneys and towers. Chimneys, cooling towers, smokestacks, and similar appurtenances are structurally safe. Exposed metal and wood surfaces are protected from the elements and against decay or rust by application of weather-coating materials, such as paint or similar surface treatment as needed or determined by the City Manager or designee.
  - (11) Sidewalk openings. Openings in sidewalks are safe for pedestrian travel. Sidewalks are kept free of snow, ice and debris.
  - (12) Accessory and appurtenant structures. Accessory and appurtenant structures such as garages, sheds, and fences are free from safety, health, and fire hazards.
  - (13) Premises. The premises on which a structure is located is clean, safe and sanitary and does not pose a threat to the public health or safety.
  - (14) External appearance. The external appearance of the structure and premises shall be maintained in such a manner that the vacant building will not be unreasonably

detrimental to property values or the character of the neighborhood as determined by the City Manager or designee.

E. Insurance.

- (1) Certificate of insurance. Upon application for a vacant building maintenance license, the owner shall provide a certificate(s) of insurance for commercial liability, if a commercial building; a certificate of insurance for personal, premises or both types of liability insurance; and a fire legal endorsement, if applicable.

F. Designation of local agent.

- (1) In addition to other information required by the City Manager, the application shall include the name, street address and telephone number of a natural person 21 years of age or older, designated by the owner or owners as the authorized agent for receiving notices of code violations and for receiving process, in any court proceeding or administrative enforcement proceeding, on behalf of such owner or owners in connection with the enforcement of this chapter. This person must maintain an office in Quay County, New Mexico, or must actually reside within Quay County, New Mexico. An owner who is a natural person and who meets the requirements of this subsection as to location of residence or office may designate himself as agent. By designating an authorized agent under the provisions of this subsection, the owner is consenting to receive all legal notices regarding the vacant building. The agent's designation for the purposes of this subsection continues until the owner notifies the appropriate department or division thereof of a change of authorized agent or until the owner files an application for a renewal of the vacant building maintenance license.
- (2) Any owner who fails to register a vacant building under the provisions of this chapter shall be deemed to consent to receive, by posting at the building and by regular mail to the owner's address of record in the Quay County Assessor's Office, any and all notices of code violations and all process in an administrative proceeding brought to enforce code provisions concerning the building.

G. Procedure for renewal.

- (1) At the time of application for a renewal of a vacant building maintenance license, the owner may arrange with the City Manager or designee for the inspection of the building, its premises and interior. If the owner fails or refuses to consent to and arrange for an inspection, the application for renewal shall be denied. The City Manager or designee shall renew a vacant building maintenance license on being satisfied after having inspected the building that the building is in compliance with the vacant building maintenance standards set forth in 7.09.040D; otherwise the City Manager shall deny renewal.
- (2) The license renewal shall be for one year, which renewal shall run from the date of expiration of the previously issued or renewed license.

H. Multiple year renewals. It is the policy of the City that multiple year renewals of a vacant building maintenance license are generally discouraged. An exception to this policy is recognized in circumstances where it would not be feasible to promptly lease, repair or restore a building and it would not be desirable to raze the building. Included in this exception are historical buildings, landmarks, buildings in redevelopment areas, and other properties that are subject to unique factors or conditions that require special consideration.

I. Fees.

- (1) Commercial, business, industrial zoned property. A nonrefundable fee of \$50 shall be charged for processing each vacant building maintenance license and for each application for any renewal of a vacant building maintenance license. A separate application shall be completed for each noncontiguous structure, excluding accessory and appurtenant structures to the main structure. Upon approval of any vacant building maintenance license, a license fee of \$300 shall be paid as a condition of the license. Upon approval of any renewal of any vacant building maintenance license, a license fee of \$500 shall be paid for the first renewal, and a license fee of \$1,000 for the second renewal and every renewal granted thereafter. All fees and penalties assessed pursuant to this chapter shall be dedicated to the City's Abatement Fund.

- (2) Agricultural, residential zoned property. A nonrefundable fee of \$25 shall be charged for processing each vacant building maintenance license and for each application for any renewal of a vacant building maintenance license. A separate application shall be completed for each noncontiguous structure, excluding accessory and appurtenant structures to the main structure. Upon approval of any vacant building maintenance license or approval of any renewal of any vacant building maintenance license, a license fee of \$200 shall be paid as a condition of the license or renewal thereof. All fees and penalties assessed pursuant to this chapter shall be dedicated to the City's Abatement Fund.

- **7.09.050 -Enforcement; civil penalties**

- A. Parties liable.

- (1) Unless otherwise specifically provided, the owner, his agent for the purpose of managing, controlling or collecting rents and any other person managing or controlling a building or premises in any part of which there is a violation of the provisions of this chapter shall be liable for any violation therein, existing or occurring, or which may have existed or occurred, at or during any time when such person is or was the person owning or managing, controlling, or acting as agent in regard to said buildings or premises and is subject to injunctions, abatement orders or other remedial orders.
- (2) The liabilities and obligations imposed on an owner shall attach to any mortgage company or any other person with or without an interest in the building or premises who knowingly takes any action in any judicial or administrative proceeding that is intended to delay issuance or enforcement of any remedy for any violation of this chapter; provided that with respect to fines such person shall be liable only for fines which accrue on or after the date of such action; and further provided that no liability shall be imposed under this chapter for any action taken in any proceeding, including a proceeding to foreclose on a lien, that does not delay or prevent the prosecution of any action brought by the City Manager or designee to enforce this chapter.

- B. Civil penalties.

- (1) Thirty days after a building becomes a vacant building with no vacant building maintenance license application, or renewal application, having been submitted, the owner shall be liable for a civil penalty of \$500. The City Manager's designee shall notify the owner as provided in 7.09.040F of the statutory penalty.
- (2) The owner shall have 30 days after notification of the initial \$500 civil penalty to acquire a vacant building maintenance license or to renew a vacant building maintenance license. The City Manager may abate all or a portion of the initial \$500 civil penalty if the owner acquires or renews that vacant building maintenance license within the thirty-day period after notification of the initial penalty and if the City Manager finds that imposition of the initial \$500 civil penalty would be unjust.
- (3) If no vacant building maintenance license is acquired or renewed within 30 days after the notification of the initial \$500 civil penalty, the owner shall be liable for a second \$500 civil penalty.
- (4) If the owner of the building is continuing to maintain a vacant building without a vacant building maintenance license after being notified, pursuant to 7.09.040F, of the second \$500 civil penalty, the City Manager may impose daily civil penalties of up to \$100 per day for every day an owner maintains a building without a vacant building license after receiving notification of the second \$500 civil penalty. Each day after receiving notification of the second \$500 civil penalty is a separate occurrence and a separate violation of this chapter. The City Manager shall notify, pursuant to 7.09.040F, the owner of the accrual of the civil penalties at least once per week.
- (5) The City Manager may abate the second \$500 civil penalty or any subsequent daily penalties only upon the owner affirmatively establishing that the owner was not negligent in failing to comply with this chapter.
- (6) The City Manager may extend the time periods for acquiring or renewing a vacant building maintenance license, if a request for extension is made prior to the expiration of any time period and if the owner or other interested party is engaged in good faith

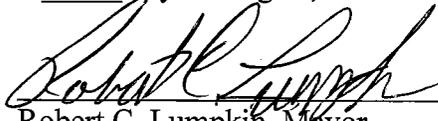
negotiations with the City Manager or City Manager's designee regarding the conditions or requirements of any vacant building maintenance license.

- C. Lien. In addition to being the personal liability of the owner, the civil penalties provided in this chapter shall be a lien on the property and may be filed and foreclosed in the manner provided by NMSA §§ 3-36-1 through 3-36-7. With regard to an innocent creditor with a mortgage on the property, the City Manager may subordinate all or part of the civil penalty to the mortgage if the City Manager finds that enforcing the statutory priority of the penalty assessment lien would be unjust under the circumstances.
- D. Criminal penalties. Any violation of this chapter may, in addition to any other remedy provided by law, be punished in accordance with the City's criminal code procedure.
- E. Judicial enforcement. The City Manager may bring an action in any court of competent jurisdiction to acquire preliminary injunctive relief or any other appropriate remedy to enforce this chapter. The City's costs and attorney fees incurred in any such action shall be a lien on the property that may be filed and foreclosed in the manner provided by NMSA §§ 3-36-1 through 3-36-7.

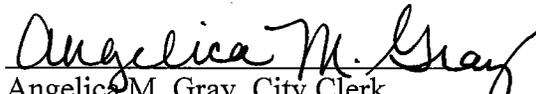
- **7.09.060 Appeal; filing fee.**

- A. The owner or other interested party may appeal the determination of either the refusal to grant a vacant building maintenance permit, the refusal to renew a vacant building maintenance permit, or any civil penalty provided for in this chapter. The appeal is to the City of Tucumcari City Commission by filing an appeal within 30 calendar days of the date of service, pursuant to 7.09.040F or in person, of the notice of the refusal to grant a vacant building maintenance permit, the refusal to renew a vacant building maintenance permit or the notice of any civil penalty provided in this chapter. Such request shall be made in writing and filed in the Office of the City Clerk. The appeal shall identify the property and state the grounds for appeal together with all material facts in support thereof. A filing fee of \$50 shall accompany each appeal application. When an appeal hearing is requested, the City staff for the City Commission shall send written notice by certified mail, return receipt requested, to the owner of the time and place of the hearing and shall publish and post notice of appeal hearing. At the hearing the owner or other interested party shall have the right to present evidence as relating to whether the City Manager or City Manager's designee engaged in an abuse of discretion by not approving or renewing a vacant building maintenance license or relating to whether a civil penalty should have been imposed. The City Commission shall, following the hearing, issue a written decision.
- B. If the City Manager refuses to exercise his discretion to abate, reduce or subordinate a civil penalty that has been properly imposed, such refusal shall not be reviewable by appeal. With regard to civil penalties provided for by this chapter, the City Commission's jurisdiction is limited to the issue of whether the penalty was properly imposed. In order to protect the City's interests, a lien for the civil penalty may be filed while the appeal is pending; any lien securing a civil penalty shall be promptly released or partially released if and to the extent the City Commission rules in favor of the owner or other interested party.
- C. The filing of any appeal shall not stay or otherwise affect any other legal proceedings to enforce any other provisions of these ordinances, including, but not limited to, any to enjoin a nuisance or enforce Chapter 7, Nuisances.

PASSED, APPROVED AND ADOPTED this 13<sup>th</sup> day of August, 2015.

  
Robert C. Lumpkin, Mayor

ATTEST:

  
Angelica M. Gray, City Clerk

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