

CITY OF TUCUMCARI
CITY COMMISSION
Work Session Notes
July 9, 2015

The Tucumcari City Commission met in a special work session on Thursday, June 11, 2015 at 5:00 p.m. in the City Commission Chambers. Members present were John Mihm, Robert Lumpkin, and Rick Haymaker. Ruth Ann Litchfield and Amy Gutierrez were absent.

City staff members present were: Jared Langenegger, City Manager; Doug Powers, Assistant City Manager; Dennis Dysart, Finance Director; Vicki Strand, Community Development Director; Shane Warner, Fire Chief/EMS Director; and Angelica Gray, City Clerk.

Discussion of Nuisance Ordinance

Jared Langenegger presented this item to the commission. He stated we have gone through our ordinance, ordinances in Las Vegas and Rio Rancho and others municipality to figure out how to give our ordinance “more teeth” if you will where there is a better way to enforce it to get better compliance and clean up the properties that we have that are nuisance properties. These properties are vacant buildings, trash in yards, weeds, abandoned vehicles, which cause a public safety hazard and devalue the property around them. He went through the ordinance with the commissioners.

He stated the ordinance starts out with definitions and defines everything that is in the ordinance and various types of nuisances.

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: He stated it is not all inclusive so if we feel it there is something that is a nuisance we can enforce that as well.

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.

He stated it was brought to his attention in reviewing the ordinance regarding the mesquite bushes, it does have just mesquite bushes, the definition for mesquite is 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. This allows people to use mesquite as landscaping that are cultivated and intended to be there however, for places where there is a lot and mesquite bushes growing at random that would be a nuisance.

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.

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.

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.

He stated basically when we find a nuisance we would give a notice.

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 Tukumcari 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.

He stated if we give a notice and they do not comply, we give them a citation with a fine attached. He stated 07.04.100 outlines the penalties and fines; those fines are progressive.

Commissioner Haymaker asked if this would constitute a court appointed lawyer if they could not afford an attorney. Mr. Langenegger stated if a person wants an attorney, we would have to provide them with one. He stated we approved a contract for a City attorney a few months ago.

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.

Mr. Langenegger stated when we serve a notice, if we find the weeds are growing back, the owner will not receive a second notice within a 12 month period. He stated the way it works, code enforcement finds a nuisance, it is a notice, it is corrected and six months there is another issue, he would write them a citation because they have already received a notice.

Mr. Powers stated he assumed that would be included in the first notice that is sent out. There are so many people who own property and live out of town and become notice of our notices. Mr. Langenegger stated that they have to designate someone who lives here to manage that property for them. They should not rely on the City to clean their yard.

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.

Mr. Langenegger stated the last ordinance stated the city manager “shall” contract for the abatement of the nuisance and he changed it to “may” because if we do not have the funds to contract he does not want someone to come in and telling us we have to correct and we would not

have the means to correct it. This gives us leniency where we do want to correct an issue but if we do not have the means at that point of time then we can correct it when there are funds.

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.

He stated we need to look at our liens and start enforcing them. He stated in talking to Mr. Knudson there are a couple of ways that we can enforce these liens. We could sue them for the amount that is owed or we can ask the court to sell the property and whatever amount it is sold for we get the amount of the lien and the owner receives the rest. He spoke with MR. Dysart and whatever is collected we will set up an account for nuisance abatement and those liens and fines go into that fund.

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.

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

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.

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.

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.

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.

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.

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.

Mayor Lumpkin asked who determines the manner of maintenance. Mr. Langenegger read the definitions of dismantled or inoperable vehicle. If the cars do not start then it is inoperable and not allowed. It must also be registered.

Mayor Lumpkin stated there are antique vehicles parked outside of hotels. Mr. Langenegger stated that if it is parked for display outside of a business he would consider it to be parked in an orderly manner.

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.

Mr. Langenegger stated that for vehicles the police department has the authority to enforce this section.

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.

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 is 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.

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.

Mr. Haymaker asked if we are not going to discuss the logistics of this ordinance. Mr. Langenegger stated he does have a few points to discuss regarding changes operationally. We have this up for a first reading tonight, if passes we will have the second reading in August. He would like to not enforce it heavily until January, which will give us time to educate the public, send out notices, and give them time to make the needed changes. Waiting until January to implement this ordinance will allow Mike to not enforce the weed ordinance and it would give him some time to work on this as well.

Mr. Haymaker stated he has read this ordinance and he does not think Mr. Langenegger needs to go over it so detailed. Mr. Langenegger stated if everyone is comfortable with it, he will go through it by section.

Chapter 7.08 - DANGEROUS BUILDINGS

Mr. Langenegger stated if everyone is comfortable with it, he will go by section. 7.08 is the Dangerous Buildings and goes through the abatement of the dangerous building and who we identify a dangerous building. The city manager, police chief, and Fire Chief, identifies it and bring to the CE and he sends out a notice. There is an appeal portion where people can appeal whether people thing it is dangerous or not. The appeal portion makes the city commission more responsible for making the decision as whether it is a dangerous building or not. If we file against someone they have the right to come before the commission and have a special hearing and the commission would have to make the decision that the designation was made appropriately.

He stated the penalties are the same as the last penalties.

7.10 –Vacant buildings.

He stated this is an entirely new portion. Up to this point the City did not have a vacant building ordinance. What this does it declares a vacant building that are not maintained and licensed are a nuisance. It sets up a licensing structure where anyone who has a vacant building has to apply with the City within 30 days for a vacant building license. It has a lengthy definition of what a vacant building is. Whenever they apply for that license there will be certain things they will have to meet. They will have to have an inspection by the Chief to make sure it is not a public hazard, make sure it is openings are secure, the roofs and sidings are intact. They need to make sure this building that is sitting there vacant is not going to further deteriorate by sitting there vacant and it will be maintained and will not cause a public hazard. It will also require the owner have a certificate of insurance and designate an agent for that property. We do have several vacant buildings where the owners live out of town or out of state however they will have to designate someone within Quay County as their agent to maintain that property as a point of contact.

The enforcement penalties are a little different in this section. Thirty (30) days after the building becomes a vacant building with no license maintenance application or renewal application having been submitted the owner is liable for a civil penalty of \$500.00. He stated we want to work with people and be reasonable and make sure these buildings are secure. This language in the ordinance is for the owner who chooses to not obtain a license. After that point, if the owner continues to not comply, we have civil penalties of \$500.

Mr. Langenegger stated there is a section for appeal to the commission.

He stated this vacant building ordinance will apply to commercial 1 & 2, industrial 1 & 2 and the Rte. 66 overlay. It will be broken down to zoning areas because it will be difficult to enforce and a lot of work for code enforcement and city hall staff and we did not think we had the ability to cover the entire city. There will be an application fee of \$50 and upon approval there will be a \$300 fee for conditional license, renewals of \$500 for the first and \$1,000 for the second renewal and every year thereafter. This should give the owner an incentive to get a business in the building.

Mayor Lumpkin asked if the owner could use the building for storage and maintain it and it would not be considered a vacant building. Mr. Langenegger read the definition for vacant building as follows: 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. Mr. Langenegger stated if an owner has a storage business; those units are not occupied by people or a construction business where the owner has a building and used for business storage; business that we have on the boulevard where things are placed and left there would be considered a vacant building license.

Mayor Lumpkin stated he is thinking of the impact. Mr. Langenegger stated there have been things that have been acceptable in the past that we need to change. Mr. Langenegger stated this ordinance will have a significant impact and the main reason why I want to educate the public. We need to let people know this is coming and the reasons for it. We will have people coming to the commission and are upset and feel that it is unfair and treating them inappropriately, however, if we want to have a community that is safe and does not present health hazards, and does not attract nuisance and crime and graffiti where we protect peoples value and ensure that these nuisances are not impacting there neighbors.

Mayor Lumpkin asked if the city government could work with a towing service to tow the vehicle for the value of the vehicle. Mr. Langenegger stated we can tow a vehicle and store it until we cite the owner and they do not come after it, however there is a certain time by statute that we must hold the vehicle before we can dispose of it.

Mr. Langenegger stated he will more than likely be asking for another code enforcement position because there is no way Mr. Ray will be able to do this on his own.

Discussion of City Recognition and Award Policy

Mr. Langenegger stated this policy sets up an awards recognition committee where the employees nominate other employees for recognition on a quarter and annual basis. It will take place at the annual dinner.

He stated the first award will be the Mayor's Award; Manager's Awards, up to two employees; exemplary team award; customer service award, up to three employees; employee of the quarter award and from those employees of the quarter we will select the employee of the year. Along with these awards we have administrative leave tied to that as a recognition to the employee, he would like to get plaques for City Hall with these employees names.

Outside of employees, we have exemplary board member award, and outstanding citizen award. We service pins and certificates along have done retirement plaques. This gives the city manager the discretionary authority to award up to 8 hours of administrative leave for significant accomplishments.

Mayor Lumpkin thinks this policy is a great thing.

Commission adjourned at 6:02 p.m.

Submitted by:

Angelica M. Gray
City Clerk