

ORDINANCE 1181

AN ORDINANCE REPEALING ORDINANCE 1144 IN ITS ENTIRETY AND REPLACING WITH ORDINANCE 1181 REGARDING 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

CHAPTER 7.04 – NUISANCES IN GENERAL

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 – Any air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive substance or matter which is emitted into or otherwise enters the ambient air. This includes, but is not limited to, material discharged into or suspended in the air in finely divided form such as sand or dust.

BLIGHT or BLIGHTED - Unightly 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.

CODE ENFORCEMENT OFFICER – Official of the City of Tucumcari designated by Ordinance to enforce local codes and ordinances primarily through inspection, notice of violation, and civil or administrative enforcement.

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, safety, or welfare 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 - Anything or act which may increase or may cause any increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by the Fire Inspector, or which may obstruct, delay or hinder the prevention, suppression or extinguishment of fire.

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. Mesquite are invasive and need to be controlled.

NUISANCE - is defined any act, omission, or condition on property that unreasonably injures, endangers, or interferes with the public health, safety, or welfare, including but not limited to conditions that:

1. Endanger the health or safety of occupants of nearby property or the public;
2. Unreasonably interfere with the use or enjoyment of public or private property;
3. Obstruct or render unsafe the use of any public street, alley, sidewalk, drainage way, or other public way; or
4. Create conditions that are likely to cause injury to persons or damage to property.

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 – Knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either: (a) injurious to public health, safety, morals, or welfare, or (b) interferes with the exercise and enjoyment of public rights including the right to use public property.

REFUSE – Any article or substance: (a) which is commonly discarded as waste; or (b) which, if discarded on the ground, will create or contribute to an unsanitary, offensive, or unsightly condition. Refuse includes but is not limited to waste food; waste paper and paper products; cans, bottles or other containers; junked household furnishings and equipment; junked parts or bodies of automobiles and other metallic junk or scrap; portions or carcasses of dead animals; and collections of ashes, dirt, yard trimmings or other rubbish.

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 non-putrescible 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 six (6) 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.

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. Excessive noise or vibration that unreasonably disturbs the peace, comfort, or repose of a reasonable person in the vicinity, in violation of applicable city ordinances or state law.
6. All disagreeable or obnoxious odors and stench, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stench.
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 causing it to be offensive or dangerous for human or animal consumption or use.
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, maintained, or knowingly permitted.
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 sufficient to be offensive to the human senses of sight, smell, or sound.

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 Section 7.04.100 of this chapter.

Each day that a nuisance continues to exist after the time to abate the nuisance described in the Notice of Violation has expired shall constitute a separate violation of this chapter.

7.04.040 – RESPONSIBILITY OF PROPERTY OWNER.

Each property owner within the city, whether a natural person or a business entity, is responsible for maintaining each individual tract of property owned in compliance with this chapter. Each property owner shall also maintain any public right-of-way immediately abutting the owner's property, including areas between the property line and the curb or roadway, free from nuisances as defined in this chapter. 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 easement rights 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 place a written notification of the nuisance violation on the door or window of the property, and shall also serve the notice upon the owner, occupant, or other responsible party in accordance with Section 7.04.070 of this chapter. The owner, occupant, or other responsible party shall have a reasonable time as designated in the notice of violation from the date of the notice of violation to abate the nuisance, request a hearing, or otherwise respond to the notice of violation. If the nuisance is not abated within the time provided in the notice of violation, then any municipal police officer may file a complaint charging violation of this chapter with the municipal court demanding that the owner, occupant, other responsible party, or all such persons or entities, be held to answer to the Court for the violation.

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, to request a hearing, or otherwise respond to the notice of violation 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.
6. A statement that if the nuisance is not abated within the time provided in the notice of violation, a complaint charging a violation of this chapter may be filed in municipal court as provided in Section 7.04.050 of this chapter.
7. A statement that if the same nuisance condition previously identified in a notice of violation occurs again at the same property within twelve (12) months of the prior notice, the City may file a complaint charging a violation of this chapter without issuing an additional notice of violation.

Pursuant to Section 3-18-17, NMSA 1978 a person who fails to abate a nuisance within the time as provided in the notice may have a criminal complaint or citation issued against them and be subject to a fine in the Tucumcari Municipal Court as provided in Section 7.04.100 of this chapter. The person against whom the criminal complaint or citation is issued shall have the option of paying the fine within the time specified on the complaint 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.

7.04.070 – SERVICE OF NOTICE.

The notice required by this chapter shall be served in the same manner as service of process permitted by applicable law, including personal service or service by mail upon the owner of record as reflected in the records of the Quay County Assessor.

7.04.080 – REMOVAL BY CITY.

A.

Inspections. The City Code Enforcement Officer is authorized to investigate and inspect private property or premises for the purpose of determining compliance with this chapter. Entry onto private property or premises for inspection pursuant to this chapter shall occur only with the consent of the owner, occupant, or other person having lawful possession of the property; pursuant to an administrative inspection warrant issued upon a showing of probable cause of violation of this chapter; or under exigent circumstances as permitted by law.

1.

Upon inspections by a City Code Enforcement Officer, if such Officer finds that this chapter has not been complied with, or that a health hazard exists, the Officer shall give written notification to the owner, tenant, lessee, manager or occupant, or other responsible party having charge of or control over the lot or tract where the conditions exist to properly correct or abate 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 other responsible party to properly correct or abate such conditions within the time prescribed or within ten (10) days after the date of such notice. In the event the notice is returned as undeliverable if served by U.S. certified mail, the City Manager may contract for the correction or abatement of the nuisance and may order the nuisance corrected or abated by the appropriate department or personnel of the City.

B.

Emergency Condition. Where the City Code Enforcement Officer finds that immediate action is required to address a condition posing an imminent threat to public health or safety, the City Manager may waive the notice and abatement period provided in this section and may take such actions as are reasonably necessary to immediately correct or abate the condition as permitted by law.

7.04.090 – ALTERNATIVE METHOD OF ABATEMENT.

A. In addition to the enforcement procedures provided elsewhere in this chapter, the City may bring an action in a court of competent jurisdiction to abate a public nuisance, including seeking injunctive relief or other appropriate remedies as permitted by law. Except as otherwise provided in this chapter, such actions shall be governed by the New Mexico Rules of Civil Procedure.

B. The remedies provided in this chapter are cumulative and not exclusive. The City may pursue any remedy authorized by this chapter or by applicable law, including administrative abatement, criminal enforcement, or civil enforcement, either separately or concurrently.

7.04.100 – VIOLATIONS - PENALTIES.

A. If, after notice of violation, any responsible party for any premises within the City shall continue to maintain a public nuisance, the code enforcement officer shall proceed to issue a criminal complaint or citation against the party responsible. The criminal complaint or citation shall have penalties associated as follows: \$100 for a first offense; \$300 for a second offense; \$400 for a third offense; and \$500 for each subsequent offense. In addition to issuance of a criminal complaint or citation, the city, in accordance with this chapter, 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 in which the nuisance was located.

B. If, after due notice, any person, persons or corporation being the owner or tenant of any premises in the city continues to maintain such premises in violation of this chapter, they shall be charged with maintaining a nuisance and be subject to the fines outlined in 7.04.100.A or incarceration or both fines and incarceration.

C. Incarceration. Notwithstanding any other provision of this chapter, any person upon whom any fine or penalty is imposed may, upon order of the court convicting him or her, be committed to the county 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 ninety (90) days for any one offense except as authorized in subsection C of section 3-17-1, NMSA, 1978.

CHAPTER 7.06 – OUTDOOR AUTOMOTIVE STORAGE

Sections:

7.06.010 – DEFINITIONS.

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

DISMANTLED OR PARTIALLY DISMANTLED VEHICLE – means any motor vehicle from which one or more major mechanical or structural components necessary for the vehicle's lawful and safe operation on a public roadway have been removed or are missing, including but not limited to the engine, transmission, wheels, tires, doors, hood, trunk lid, windshield, or other essential operating components

HIGHWAY – means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction.

INOOPERATIVE or INOPERABLE VEHICLE – means any motor vehicle, which by reason of dismantling, disrepair, or other cause is incapable of being propelled under its own power.

VEHICLE – means every device in, upon or by which any person is or may be transported or drawn upon a highway, including any frame, chassis, body or unitized frame and body of any vehicle or motor vehicle, except devices moved exclusively by human power or used exclusively upon stationary rails or tracks.

7.06.020 - CONSTRUCTION.

The provisions of this chapter are and shall be construed as being supplementary to, and shall not limit or replace, any provisions of the title relating to nuisances, rubbish, litter, garbage, refuse, trash or junk. Nothing in this chapter shall 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 storage, accumulation, or presence of a dismantled, partially dismantled, or inoperable vehicle or parts thereof on any occupied or unoccupied property within the city limits, except as permitted in this chapter, 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. A vehicle that remains unattended on any highway, street, alley, or public right-of-way within the city for more than seventy-two (72) consecutive hours shall be presumed to be 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, currently registered, and lawfully parked.

Nothing in this chapter shall limit the authority of the city or law enforcement to remove abandoned vehicles as otherwise authorized by state law.

7.06.050 - SAME – PROHIBITED ON STREETS.

No person shall place, store, or allow any dismantled, partially dismantled, inoperable, wrecked, or discarded motor vehicle to remain on any street, highway, alley or other public right-of-way within the city for longer than twenty-four (24) hours.

7.06.060 PROHIBITED ON PROPERTY.

No person having charge or control of any property within the city, whether as owner, tenant, occupant, lessee or otherwise, shall allow any partially dismantled, inoperable, wrecked, or

discarded vehicle to remain on such property longer than sixty (60) days. A vehicle described in this section may remain on the property beyond sixty (60) days if the vehicle if it is located and maintained in such a manner that it does not constitute a health, safety or fire hazard and is effectively screened from ordinary public view from adjacent streets and properties by means of enclosure by a solid six foot privacy fence. This chapter shall not apply to a vehicle in a fully enclosed building; a vehicle on the premises of a lawfully operated business where such vehicle necessary to the operation of such business enterprise; 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, defined as a motor vehicle twenty-five (25) years of age or older from the date of manufacture of such vehicle. Any vehicle stored pursuant to this section shall be parked and maintained in an orderly manner that does not create a nuisance, hazard, or unsafe condition.

7.06.070 - NOTICE OF VIOLATION.

Should any police officer or other employee of the city observe or otherwise determine that any violation of this chapter exists, the City shall issue a notice of violation to the owner of the vehicle or the owner or occupant of the property on which the vehicle is located. The notice shall described the violation and shall require the responsible party to correct the violation within a reasonable period of time not to exceed thirty (30) days from the date of the notice. Notice may be served personally or by U.S. Certified Mail to the last known address of the responsible party and by posting on the vehicle or property where the violation exists.

7.06.080 - IMPOUNDED VEHICLES.

If a responsible party fails, neglects, or refuses to correct a violation described in a notice of violation issued pursuant to Section 7.06.070 within the time specified in the notice, the City may cause the vehicle described in the notice to be removed and impounded in accordance with applicable law. 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.

Prior to removal and impoundment, the responsible party may request a hearing before the Municipal Court within the time specified in the notice of violation. If a hearing is timely requested, the vehicle shall not be removed and impounded until the Municipal Court determines that a violation of this chapter exists and authorizes its removal and impoundment.

If the violation of this article described in the notice has not been remedied within the period of compliance, or in the event that a notice requesting a hearing is timely filed, a hearing is held, the existence of the violation is affirmed, and removal and impoundment is authorized by the Municipal Court, then the City Manager, or its designee shall have the right to take possession of the vehicle and remove it from the premises. Entry onto private property for the purpose of removing a vehicle pursuant to this section shall occur only with the consent of the owner or occupant of the property, pursuant to a warrant issued by a court of competent jurisdiction, or under exigent circumstances as permitted by law. It shall be unlawful for any person to interfere with, hinder, or refuse to allow such person or persons to enter upon private property for the purpose of removing the vehicle under this order.

7.06.090 - POLICE DEPARTMENT POWERS AND DUTIES.

The chief of the police department, or any other employee of the police department designated by the chief of police, is authorized to cause the removal of any abandoned vehicle from a street, alley, or other public place within the city to the nearest storage facility or other place of safety. Whenever an officer causes the removal of an abandoned vehicle pursuant to this section, the officer shall promptly 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. Notice of the impoundment shall be sent by certified mail to the registered owner, if known, advising the owner of the location of the vehicle, the reason for impoundment, and the owner's right to request a hearing before the Municipal Court. 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 party responsible of any premises within the city shall continue to maintain a public nuisance, the code enforcement officer shall proceed to issue a criminal complaint or citation against the party responsible. The criminal complaint or citation shall have fines associated as follows: \$100 for a first offense; \$300 for a second offense; \$400 for a third offense; and \$500 for each subsequent offense, fees will be in addition to applicable court costs.
- 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 violation of this chapter, they shall be charged with maintaining a nuisance and such person, persons or corporation shall be fined pursuant to 7.06.100.A or imprisoned in the county jail not to exceed ninety (90) days or both such fine and imprisonment.

CHAPTER 7.08 - DANGEROUS BUILDINGS

Sections:

7.08.010 – Definition

The term “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, safety, or welfare because of its condition, and which causes or contributes to unsanitary conditions 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, 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 foreseeable 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 or visitors of such structure, or, which constitutes an attractive nuisance or which would invite or create curiosity which foreseeably results in individuals entering said building.

Any such “dangerous building” in the city is declared to be a nuisance.

7.08.020 – PROHIBITION.

It is unlawful to maintain or permit the existence of any dangerous building in the city or fail to repair, remodel, renovate, or remove any building so designated. It is further 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 in a dangerous condition.

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, 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 certified 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. 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 reasonable costs incurred by the City of Tucumcari in the removal of the building, structure, ruins, rubbish, wreckage, or debris shall assessed against the property from which it was removed and the City may cause a lien against the property to be filed and asserted in accordance with applicable law, and collected by legal means.

7.08.040 – APPEAL.

- A. The owner or other interested party may appeal the determination that the building is a dangerous building, or any civil penalty provided for in this chapter. The appeal is to the City of Tucumcari City Commission by filing an appeal within ten (10) calendar days of the date of service of the notice of determination that the building is a dangerous building 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 relating to whether the building is a dangerous building or relating to whether a civil penalty should have been imposed. The hearing concerning the appeal shall be recorded, and the Municipal Clerk shall administer an oath to each witness that seeks to testify before the City Commission. Formal rules of evidence shall not apply at the time of the hearing and the party seeking review shall have the right to have counsel present. 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 Title 7 of the City of Tucumcari Code of Ordinances.

7.08.050 - VIOLATIONS - PENALTIES.

- A. If, after notice of violation, any party responsible of any premises within the city shall continue to maintain a public nuisance, the code enforcement officer shall proceed to issue a criminal complaint or citation against the party responsible. The criminal complaint or citation shall have fines associated as follows: \$50 for a first offense; \$200 for a second offense; \$300 for a third offense; and \$500 for each subsequent offense. In addition to issuance of a criminal complaint or 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.

- 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 violation of this chapter, they shall be charged with maintaining a nuisance and such person, persons or corporation shall be fined pursuant to Section 7.08.050A or imprisoned in the county jail not to exceed ninety (90) days or both such fine and imprisonment.

CHAPTER 7.10 – VACANT BUILDINGS

7.10.010 – 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.

7.10.020 - DECLARATION OF NUISANCE

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

7.10.030 – 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 vacant building is defined herein as a residential or commercial building which is lacking habitual presence of natural persons who have a legal right to be on the premises, and at which substantially all lawful business operations or residential occupancy has ceased, and at which all utility services have been discontinued or inactive. 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. Any residence or commercial building without utilities, water, sewer, electricity, shall not be occupied. 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, and the owner possesses a valid business license consistent with said business, the building will be exempt from the licensing requirements of the vacant building ordinance. 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. Buildings which are registered on the State or National Historic Register as historic buildings will be exempt from the requirements of the vacant building ordinance. A vacant building maintenance license (VBML) ensures that vacant

buildings are properly maintained, inspected, and compliant with local standards to prevent blight and public hazards.

7.10.040 - 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. 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 7.10.040E. If the building does not 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 7.10.040E. Any inspection conducted pursuant to this section shall occur only with the consent of the owner or occupant, pursuant to an administrative inspection warrant issued by a court of competent jurisdiction, or under exigent circumstances as permitted by law.
- 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 7.10.040E; otherwise, the City Manager or designee shall deny the license. Licenses shall be valid for the calendar year in which they are issued.
- D. Should a vacant building not meet the vacant building maintenance standards set forth in 7.10.040E, the owner may present a written plan to the City outlining the actions the owner will take to bring the building into compliance with the required standards. The plan must outline the corrections to be made along with a timeline for said corrections. Upon the receipt of an acceptable plan, the City Manager or designee may conditionally grant the license.
- E. 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 vermin proof.
 - (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 the 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.

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 receiving 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 may be served with notices of violation and other enforcement notices by posting at the building and by mailing to the owner's address of record in the Quay County Assessor's Office.

G. Procedure for renewal.

- (1) At the time of application for the 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 so that the building is in compliance with the vacant building maintenance standards set forth in 7.10.040E; otherwise, the City Manager shall deny renewal.

- (2) The license renewal shall be for one year, which renewal shall run on a calendar year basis. Renewals are due to the City no later than December 1st of each year.

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 \$75.00 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 \$75.00 shall be paid as a condition of the license. Upon approval of any renewal of any vacant building maintenance license, a license fee of \$75.00 shall be paid. All fees and penalties assessed pursuant to this chapter shall be dedicated to the City's Abatement Fund.

7.10.050 - 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.

B. Civil penalties.

- (1) Thirty days after a building is identified as 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 7.10.040G 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 7.10.040G, 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 7.10.040G, 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 may seek recovery of its costs and reasonable attorney fees in any such action as may be awarded by the court.

7.10.060 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 7.10.040G 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 relating to whether the requirements of this chapter were properly applied in denying or refusing to renew a vacant building maintenance license or in imposing a civil penalty. The hearing concerning the appeal shall be recorded, and the Municipal Clerk shall administer an oath to each witness that seeks to testify before the City Commission. Formal rules of evidence shall not apply at the time of the hearing and the party seeking review shall have the right to have counsel present. 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.

NOW THEREFORE, IT IS ORDAINED by the City Commission, the Governing Body of the City of Tucumcari, New Mexico, that:

Ordinance 1133 is hereby repealed in its entirety and replaced with this Ordinance 1144 regarding 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

All ordinances or part of ordinances in conflict herewith are hereby repealed.

This ordinance shall take effect upon final passage, and five days after final publication thereof.

PASSED, APPROVED, AND ADOPTED on this 23 day of April, 2026.

ATTEST:

Angelica M. Gray
Angelica M. Gray, City Clerk

Marcella Willis
Marcella Willis, Mayor

