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**CITY OF SANTA FE, NEW MEXICO**

**ORDINANCE NO. 2020-16**

**AN ORDINANCE**

**RELATING TO THE NUISANCE ABATEMENT ORDINANCE, SECTION 10-9 SFCC 1987; AMENDING SECTION 10-9.2 TO ALIGN THE INTENT WITH THE PURPOSE OF THE BILL; AMENDING SECTION 10-9.3 TO AMEND AND ADD DEFINITIONS; AMENDING SECTION 10-9.4 TO MAKE THE PROPERTY OWNER RESPONSIBLE; REPEALING AND READOPTING A NEW SECTION 10-9.5 TO ESTABLISH A PROCESS FOR A NUISANCE INVESTIGATION AND ABATEMENT PROCESS; REPEALING AND READOPTING A NEW SECTION 10-9.6 TO ESTABLISH TENANTS' RIGHTS; AMENDING SECTION 10-9.7 TO ESTABLISH ENFORCEMENT PROVISIONS TO HOLD THE PROPERTY OWNER ACCOUNTABLE; AMENDING SECTION 10-9.8 REGARDING RESERVATION OF LEGAL OPTIONS; AMENDING SECTION 10-9.9 REGARDING APPEALS; AMENDING SECTION 10-9.10 TO REMOVE EXTRANEOUS LANGUAGE; REPEALING SECTION 10-9.11 REGARDING SUPPLEMENTARY REMEDIES FOR PUBLIC NUISANCES; AND AMENDING SECTION 10-9.13 REGARDING THE RIGHT OF ENTRY.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

**Section 1. Section 10-9.2 of SF CC 1987 (being Ord. No. 2005-1 § 9, as amended) is amended to read:**

**10-9.2 Intent.**

**A. The abatement of public nuisances for the protection of public health, safety,**

1 and well-being is a matter of local concern. The purpose of this section is to abate public  
2 nuisances. The remedial actions provided in this section are intended to be civil in nature.

3 B. The purpose of this section is to prevent the use of property as a public  
4 nuisance and to minimize the impact of nuisance properties on surrounding neighborhoods by  
5 imposing a civil fee against the property owner for conducting, aiding, allowing, permitting,  
6 or condoning a public nuisance at a property. If the city deems the property owner to be non-  
7 compliant with the required abatement plan, the city may issue fines and may request that a  
8 district court place a lien on the property pursuant to Section 10-9.7 SFCC 1987.

9 **Section 2. Section 10-9.3 of SFCC 1987 (being Ord. No. 2005-1 § 10, as**  
10 **amended) is amended to read:**

11 **10-9.3 Definitions.**

12 For the purposes of this section the following definitions shall apply unless the context  
13 clearly indicates or requires a different meaning.

14 *Abate* means to repair, replace, remove, destroy, bring to a halt, eliminate, or, where  
15 that is not possible or feasible, to suppress, reduce, or minimize.

16 *Abatement plan* means a document including the name and address of the property  
17 owner and, if applicable, the person(s) in charge of the property; the street address or a  
18 description sufficient for identification of the property, building, structure, or land upon or  
19 within which the nuisance is occurring; a description of or reference to the relevant nuisance  
20 activities; an outline of the steps required to rectify the public nuisance(s), including a timeline  
21 for completion; and an agreement by the property owner that the city may (1) inspect the  
22 property as necessary to determine compliance with the abatement plan; (2) if the property  
23 owner fails to comply with the abatement plan by the deadline outlined within the abatement  
24 plan, abate the nuisance and recover costs, expenses, and monetary penalties pursuant to 10-9.7  
25 SFCC 1987.

1        *Alcohol* means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever  
2 source or by whatever process produced.

3        *Alcoholic beverage* means alcohol, spirits, liquor, wine, beer, and every liquid or solid  
4 containing alcohol, spirits, wine, or beer, and which contains one-half of one percent (.5%) or  
5 more of alcohol by volume and which is fit for beverage purposes either alone or when diluted,  
6 mixed, or combined with other substances.

7        *Building* means a structure, as defined herein, which is enclosed with walls and a roof  
8 so that there are no sides left open.

9        *Contraband* means any personal property which is illegal to own.

10       *Juvenile* means any person under eighteen (18) years of age.

11       *Loud or unruly gathering* means a party or gathering of two (2) or more persons at or  
12 on a property, who are causing noise that disturbs the peace or obstructs public streets,  
13 including crowds of people who have spilled into public streets.

14       *Incident* means:

15       A.     A response to the relevant property from law enforcement, fire, or other  
16 emergency response provider;

17       B.     Land use code citation; or

18       C.     Constituent complaint.

19       *Person* means natural persons and every legal entity whatsoever, including but not  
20 limited to sole proprietors, corporations, limited liability companies, trusts, partnerships,  
21 limited partnerships, and associations.

22       *Personal property* means all property of every kind and nature whatsoever, including  
23 cash, vehicles, animals, intangible property, and contraband, but not including real property of  
24 any kind.

25       *Property* means property of all kinds, including real property and personal property,

1 including a home, yard, apartment, condominium, hotel, motel, vacant lots, abandoned  
2 buildings, or a hall or meeting room, whether occupied on a temporary or permanent basis,  
3 whether occupied as a dwelling, and whether owned, leased, rented, or used with or without  
4 compensation.

5 *Property owner* means a person who holds fee simple title to any property, or a person  
6 acting lawfully on behalf of the person who holds title.

7 *Public nuisance or nuisance* means:

8 A. Any building or structure which is ruined, damaged or dilapidated to such an  
9 extent, or any real property which is covered with ruins, rubbish, wreckage or debris to such  
10 an extent that the building, structure or real property threatens harm to the public comfort,  
11 health, well-being, peace or safety; or

12 B. Any property or vehicle on or in which any illegal activities as established in  
13 federal law, New Mexico state statute, or Santa Fe city code occur or which is used to commit,  
14 conduct, promote, facilitate any illegal activities and, because of such activity or use, the  
15 property threatens harm to the public comfort, health, peace, well-being or safety.

16 C. A loud or unruly gathering as defined in this subsection.

17 D. A nuisance as defined or described in any other section of the city code.

18 E. Knowingly creating, performing, or maintaining anything affecting any  
19 number of citizens without lawful authority that is either:

20 (1) Injurious to public health, safety, or well-being; or

21 (2) Interferes with the exercise and enjoyment of public rights, including  
22 the right to use public or private property.

23 *Real property* means land and all improvements, buildings, and structures, and all  
24 estates rights and interests, legal and equitable, in the same, including, but not limited to, all  
25 forms of ownership and title, future interests, condominium rights, time-share rights,

1 easements, water rights, mineral rights, oil and gas rights, space rights, and air rights.

2 *Structure* means anything constructed, erected, or placed upon real property which is so  
3 firmly attached to the land as to be reasonably considered part of the real estate, and includes  
4 building of every type and nature whatsoever.

5 *Underage person* means any person under twenty-one (21) years of age.

6 *Vehicle* means every device in, upon, or by which any person or property is or may be  
7 transported or drawn upon a highway, including any frame, chassis, or body of any vehicle or  
8 motor vehicle, except devices moved exclusively by human power or used exclusively upon  
9 stationary rails or tracks.

10 **Section 3. Section 10-9.4 of SFCC 1987 (being Ord. No. 2011-2 § 4) is amended**  
11 **to read:**

12 **10-9.4 Responsibility.**

13 A. Every property owner of any possessory interest of a property within the city  
14 of Santa Fe is required to maintain, manage, and supervise the property and all persons  
15 thereon in a manner so as not to violate the provisions of this section. The property owner  
16 remains liable for such violations regardless of any contract or agreement with any third party  
17 regarding the property.

18 B. The property owner shall not conduct, aid, allow, permit, or condone a public  
19 nuisance at the owner's property.

20 C. If the property owner of the property on which a nuisance occurs is a juvenile,  
21 then the parents or guardians of that juvenile and the juvenile will be jointly and severally  
22 liable for the abatement costs or fines incurred pursuant to this section.

23 D. A property owner need not be present when a nuisance occurs in order for an  
24 investigation, submittal of an abatement plan, fines, or a lien against the property to result  
25 This section therefore imposes vicarious as well as direct liability upon a property owner.

1           Section 4.       Section 10-9.5 of SFCC 1987 (being Ord. No. 2011-2 § 5) is hereby  
2 repealed.

3           Section 5.       **[NEW MATERIAL]** A new Section 10-9.5 of SFCC 1987 is ordained  
4 to read:

5           **10-9.5 Nuisance investigation and abatement plan.**

6           A.       Internal nuisance investigation.

7               1.       The city shall initiate an internal nuisance investigation when a property  
8 accumulates six (6) incidents within a six (6) month period. Such investigation shall  
9 consider the number and severity of the incidents; law enforcement, fire, or first  
10 responder statements; neighborhood testimony; past abatement plans; the relative impact  
11 of the incidents on the public; and any other available information with which to make a  
12 determination of a nuisance. The city shall not include calls for law enforcement, fire, or  
13 other first responders in an investigation, if the caller was seeking emergency assistance  
14 for the safety of themselves or others.

15               2.       When it has initiated an internal nuisance investigation, the city shall  
16 send the property owner a letter describing the relevant incidents and alerting the owner  
17 that the City has initiated an investigation.

18               3.       If, in consultation with the city attorney's office, the assigned City  
19 representative determines a nuisance exists pursuant to the internal nuisance  
20 investigation, the City shall issue a notice of violation and initiate the abatement process.

21               4.       The City may start an internal nuisance investigation before six (6)  
22 incident occur, if the incidents are egregious.

23           B.       Abatement process.

24               1.       In its notice of violation, the city shall require the property owner to  
25 submit an abatement plan.

1           2.     The property owner shall submit the abatement plan to the city within  
2 fifteen (15) days after receipt of the notice of violation. If the deadline for submission  
3 falls on a Saturday, Sunday, or federal or city holiday, the deadline shall be extended to  
4 the next regular business day.

5           3.     Corrective action in the abatement plan may include any of the  
6 following:

7                 a.     More effective screening of tenants, lease provisions, and lease  
8 enforcement;

9                 b.     Implementing physical improvements;

10                c.     Providing security for the property;

11                d.     Evicting persons responsible for the nuisance activity;     an  
12 abatement plan shall not solely consist of eviction;

13                e.     Pursuing other remedies available to the owner pursuant to any  
14 lease or other agreement and approved by the city.

15           4.     After review, the city shall approve or deny the abatement plan submitted  
16 by the property owner. If the city determines the abatement plan is inadequate to abate  
17 the nuisance(s), it shall be denied. If the city denies the abatement plan, the property  
18 owner shall have five (5) additional days to submit an updated abatement plan. If the  
19 property owner fails to provide an abatement plan, or if the city denies the abatement plan  
20 a second time, the property is noncompliant and the property owner shall be subject to the  
21 enforcement provisions of Section 10-9.7 SFCC 1987.

22           5.     If the city approves the abatement plan, it will monitor the property for  
23 compliance pursuant to the timeframe included in the abatement plan. If the property is in  
24 compliance, the City will continue to monitor the property for a period of three (3)  
25 months. If the property does not receive another notice of violation during the probation

1 period, the property will be considered compliant. The city shall send the property owner  
2 a certified letter verifying compliance and removal from probation.

3 6. If the property owner fails to provide an approved abatement plan within  
4 fifteen (15) days, or does not comply with the abatement plan within thirty (30) days of  
5 approval, or as otherwise provided for in the abatement plan, then the city will consider  
6 the property owner non-compliant.

7 **Section 6. Section 10-9.6 of SFCC 1987 (being Ord. No. 2011-2 § 6) is hereby**  
8 **repealed:**

9 **Section 7. [NEW MATERIAL] A new Section 10-9.6 of SFCC 1987 is ordained**  
10 **to read:**

11 **10-9.6 Tenants' rights.**

12 Neither a property owner nor the city shall:

13 A. Prohibit or limit a tenant's right to summon police or other emergency assistance  
14 based on the tenant's reasonable belief that the tenant or any other individual is in need of  
15 intervention or emergency assistance; or

16 B. Impose monetary or other penalties on a tenant who summons police or  
17 emergency assistance if the assistance was requested or dispatched based on a reasonable belief  
18 that the tenant or other individual was in need of intervention or emergency assistance.

19 **Section 8. Section 10-9.7 of SFCC 1987 (being Ord. No. 2011-2 § 6) is amended**  
20 **to read:**

21 **10-9.7 Enforcement Provisions.**

22 A. The expenses and monetary penalties assessed after a property is deemed a  
23 nuisance shall be a debt owed to the city of Santa Fe by the property owner held liable in  
24 subsection 10-9.4 SFCC 1987 for the nuisance and, if the property owner is a juvenile, the  
25 debt shall be owned by the juvenile's parents or guardians.



1           B.     If the city determines that an owner is non-compliant, and the nuisance presents  
2 an imminent risk to the health and safety of the public, the city may abate the nuisance, at the  
3 expense of the property owner. Additionally, the city may charge the property owner a fine of  
4 one hundred dollars (\$100.00) per day for each day of non-compliance.

5           C.     The city shall send via certified mail notification of the costs and/or fines for  
6 which the owner is liable within fourteen (14) days of the determination of non-compliance  
7 giving rise to such costs. The notice shall contain the following information:

8                   (1)     The name of the person(s) being held liable for the payment of such  
9 costs and/or fines;

10                   (2)     The address of the residence or other property where the nuisance  
11 occurred;

12                   (3)     The date and time of nuisance notices, as well as reports, evidence,  
13 and timeline of non-compliance; and

14                   (4)     Notice of the opportunity to appeal the determination within fifteen  
15 (15) days, pursuant to Section 10-9.9.

16           D.     If the property owner fails to comply with the City's notice and fines, including  
17 non-payment of abatement costs or fines, within ninety (90) days, the city may file an action  
18 against the property owner in district court, recommending any appropriate action including, but  
19 not limited to, placing a lien on the property, forcing the sale of the property, allowing entry  
20 onto the property to abate the nuisance, or seizing the property. After ninety (90) days of non-  
21 compliance the one hundred (\$100.00) per day fine shall no longer accumulate. The maximum  
22 amount of the cumulative fines shall be nine thousand dollars (\$9,000.00). The city may also file  
23 in district court if an internal investigation concludes that three incidents have occurred after a  
24 notice of violation, in any two (2) year period, regardless of the property owner's abatements.

25           **Section 9.     Section 10-9.8 of SFCC 1987 (being Ord. No. 2011-2 § 8) is amended**

1 to read:

2 **10-9.8 Reservation of legal options.**

3 Nothing in this section shall be construed as a waiver by the city of any right to seek  
4 reimbursement for abatement costs or unpaid fines through other legal remedies or procedures.

5 The procedures provided for in this section are in addition to any other statute, ordinance or  
6 law, civil or criminal.

7 **Section 10. Section 10-9.9 of SFCC 1987 (being Ord. No. 2011-2 § 8) is amended**

8 to read:

9 **10-9.9 Appeals.**

10 Administrative Hearing.

11 A. Request for Hearing. A person who is issued a notice of violation may  
12 request an administrative appeal hearing before a hearing officer, who shall be  
13 appointed by the city manager. A request for hearing must be made in writing and must  
14 be submitted to the address included in the notice, within fifteen (15) days of the date  
15 of receipt of the notice of violation.

16 B. Deposit Pending Appeal. An amount equal to any fines assessed at the  
17 time of notice of violation must accompany a request for hearing. The city shall hold  
18 the payment as a deposit until the hearing officer makes a decision. If the hearing  
19 officer upholds the notice of violation, the city shall apply the deposit towards the fines  
20 and/or abatement. If the hearing officer decides in favor of the requestor, the city shall  
21 return the deposit to the requestor.

22 C. Appeal to District Court. If the hearing officer denies an appeal, the  
23 person upon whom the city imposed abatement costs or fines shall have the right to  
24 petition district court for a writ of certiorari pursuant to Rule 1-075 NMRA.

25 **Section 11. Section 10-9.10 of SFCC 1987 (being Ord. No. 2011-2 § 8) is**

1 amended to read:

2 **10-9.10 Procedures in general.**

3 A. The remedies provided in this section are cumulative and supplementary to  
4 each other to the criminal remedies provided by any criminal ordinance or statute, other civil  
5 remedies, and any administrative proceedings to revoke, suspend, fine, or take other action  
6 against any license. The city may pursue the remedies provided in this section, or other  
7 ordinances or statutes, other civil actions or remedies, administrative proceedings against a  
8 license, or any one (1) or more of the available remedies, and may do so simultaneously or in  
9 succession.

10 B. All actions under this section are civil and remedial in nature.

11 C. The city attorney for the city of Santa Fe may file a civil action to abate any  
12 nuisance in the District Court for the First Judicial District.

13 D. Actions under this section may affect the use, possession, enjoyment, and title  
14 to real property. Accordingly, the city may file and record a notice of lis pendens against the  
15 real property involved if the use, possession, enjoyment, or title may be affected.

16 E. The defendants to an action under this section and the persons liable for the  
17 remedies in this section may include the property itself and any persons owning or claiming  
18 any legal or equitable interest or right of possession in the property.

19 F. In addition to remedies necessary to abate the nuisance, the city shall be  
20 entitled to costs and reasonable attorney's fees.

21 **Section 12. Section 10-9.11 of SFCC 1987 (being Ord. No. 2011-2 § 8) is hereby**  
22 **repealed:**

23 **Section 13. Section 10-9.13 of SFCC 1987 (being Ord. No. 2011-2 § 8) is**  
24 **amended to read:**

25 **10-9.13 Right of entry of inspection officer for examination of premises.**

1 The inspection officer may enter, at all reasonable times, if the inspection officer has  
2 the occupant's consent, any property within the city to ascertain the existence of any nuisance.  
3 If the occupant's or consent is not given or is otherwise unobtainable, an inspection order may  
4 be sought or an emergency inspectorial search conducted pursuant to the procedures set forth in  
5 Sections 24-1-16 through 24-1-19 NMSA 1978 of the Public Health Act. The inspection officer  
6 may investigate the conditions found and make reports, provided that such entering and  
7 investigation are for the sole purpose of ascertaining the conditions entrusted to the officer's  
8 supervision and provided further that the officer's reports are limited to matters pertaining to  
9 the officer's duties.

10 PASSED, APPROVED, and ADOPTED this 29<sup>th</sup> day of July, 2020.

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14 ALAN WEBBER, MAYOR

15 ATTEST:

16  
17   
18 YOLANDA Y. VIGIL, CITY CLERK

19 APPROVED AS TO FORM:

20  
21   
22 ERIN K. McSHERRY, CITY ATTORNEY

23  
24 *Bill No. 2020-18*

25 *Legislation/2020/Ordinances/2020-16 Nuisance Abatement*