

CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2011-2

AN ORDINANCE

AMENDING ARTICLE 10-9 SFCC 1987, THE CITY OF SANTA FE'S NUISANCE ABATEMENT ORDINANCE, TO INCLUDE LOUD OR UNRULY GATHERINGS AS A PUBLIC NUISANCE; AND TO AUTHORIZE THE CITY TO COLLECT FOR THE COSTS OF RESPONDING TO A PUBLIC NUISANCE; AND TO MAKE SUCH OTHER CHANGES AS ARE NECESSARY.

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

Section 1. Section 10-9.1 SFCC 1987 (being Ord. #2005-1, §8) is amended to read:

10-9.1 Short Title; Applicability.

This Article may be cited as the Nuisance Abatement Ordinance. This Article is in addition to any other nuisance abatement procedures provided for under state law, city ordinance or under the common law.

Section 2. Section 10-9.2 SFCC 1987 (being Ord. # 2005-1, §9) is amended to read:

10-9.2 Intent.

A. The abatement of public nuisances for the protection of public health, safety, and welfare is a matter of local concern. The purpose of this Article is not to punish, but to abate public nuisances. The remedies provided in this Article are directed at the property involved without regard to ownership, title or right of possession and the culpability or innocence of those

1 who hold these rights. The remedial actions provided in this Article are intended to be civil in
2 nature.

3 B. The purpose of this Article is to reduce the costs of providing police, fire and
4 other emergency response services by imposing a civil fee against persons responsible for
5 conducting, aiding, allowing, permitting or condoning a public nuisance at a residence or other
6 private property for the recovery of costs associated with providing law enforcement, fire and
7 other emergency response services to public nuisances.

8 **Section 3. Section 10-9.3. SFCC 1987 (being Ord. #2005-1 §10) is amended to**
9 **read:**

10 **10-9.3 Definitions.**

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

13 *Abate* means to bring to a halt, eliminate or, where that is not possible or feasible, to
14 suppress, reduce, or minimize.

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

17 *Alcoholic beverage* means alcohol, spirits, liquor, wine, beer, and every liquid or solid
18 containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of
19 alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or
20 combined with other substances.

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

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

24 *Juvenile* means any person under eighteen years of age.

25 *Loud or unruly gathering* means a party or gathering of two or more persons at or on a

1 residence or other private property upon which loud or unruly conduct occurs. Loud or unruly
2 conduct includes, without limitation the following as further defined in city code or state law:

- 3 A. Excessive noise;
- 4 B. Obstruction of public streets or crowds that have spilled into public streets;
- 5 C. Public drunkenness or unlawful public consumption of alcohol or alcoholic
6 beverages;
- 7 D. Service to or consumption of alcohol or alcoholic beverages by any underage
8 person, except as permitted by state law;
- 9 E. Assaults, batteries, fights, disorderly conduct, or other disturbances of the peace;
- 10 F. Vandalism;
- 11 G. Litter; and
- 12 H. Any other conduct which constitutes a threat to public health, safety, quiet
13 enjoyment of residential property or general welfare, including that conduct defined under public
14 nuisance herein.

15 *Person* means natural persons and every legal entity whatsoever, including but not
16 limited to sole proprietors, corporations, limited liability companies, partnerships, limited
17 partnerships, and associations.

18 *Personal property* means all property of every kind and nature whatsoever including
19 cash, vehicles, animals, intangible property and contraband, but not including real property of any
20 kind.

21 *Property* means property of all kinds, including real property and personal property as
22 defined herein.

23 *Public nuisance or nuisance* means:

- 24 A. Any building or structure which is ruined, damaged or dilapidated to such an
25 extent, or any real property which is covered with ruins, rubbish, wreckage or debris to such an

1 extent that the building, structure or real property threatens harm to the public comfort, health,
2 peace or safety; or

3 B. Any property or vehicle on or in which any of the following illegal activities
4 occur, or which is used to commit, conduct, promote, facilitate any of the following activities and
5 because of such activity the property threatens harm to the public comfort, health, peace or safety.

6 For purposes of this Article, the illegal activity shall have the same definition as that contained in
7 the section of the New Mexico Statutes Annotated (NMSA), as amended, or Chapters XII or XX
8 SFCC 1987, as amended, listed after the illegal activity:

9 (1) Prostitution, Section 30-9-2 NMSA; patronizing prostitutes, Section 30-
10 9-3 NMSA, promoting prostitution, Section 30-9-4 NMSA; or accepting earnings of a
11 prostitute, Section 30-9-4.1 NMSA;

12 (2) Sexual exploitation of children by prostitution, Section 30-6A-4 NMSA;

13 (3) Sexual exploitation of children, Section 30-6A-3 NMSA;

14 (4) Trafficking in controlled substances, Section 30-31-20 NMSA;
15 distributing controlled substances to a minor, Section 30-31-21 NMSA; distribution of a
16 controlled substance, Section 30-31-22 NMSA; possession of a controlled substance,
17 Section 30-31-23 NMSA; distributing a counterfeit controlled substance, Section 30-31-
18 22B NMSA; distributing, manufacture, or possession of a imitation controlled substance,
19 Section 30-31A-4 NMSA; sale of an imitation controlled substance to a minor, Section
20 30-31A-5 NMSA;

21 (5) Unlawful possession, delivery, manufacture or delivery to a minor of
22 drug paraphernalia, Section 30-31-25.1 NMSA;

23 (6) Commercial gambling, Section 30-19-3 NMSA; permitting premises to
24 be used for gambling, Section 30-19-4 NMSA; dealing in gambling devices, Section 30-
25 19-5 NMSA;

1 (7) Unlawful carrying of a deadly weapon, Section 30-7-2 NMSA and
2 Section 20-19 SFCC 1987; unlawful possession of a handgun, Section 30-7-2.2 NMSA;
3 negligent use of a weapon, Section 30-7-4 NMSA; unlawful possession of a switchblade,
4 Section 30-7-8 NMSA; receipt, transportation or possession by a felon of a firearm or
5 destructive device;

6 (8) Dangerous use of explosives, Section 30-7-5 NMSA; negligent use of
7 explosives, Section 30-7-6 NMSA; unlawful sale, possession or transportation of
8 explosives, Section 30-7-7 NMSA; possession of explosives, Section 30-7-19 NMSA;
9 possession of explosive device or incendiary device, Section 30-7-19.1 NMSA;

10 (9) Shooting at a dwelling or occupied building or shooting at or from a
11 motor vehicle, Section 30-3-8 NMSA;

12 (10) Selling, serving, giving away, disposing of, exchanging, delivering,
13 procuring, possessing or permitting the sale of alcoholic beverages to, for or by any
14 person under lawful age or to an intoxicated person, Sections 60-7A-16 and 60-7B-1
15 NMSA; using property to provide, offer or permit the consumption of intoxicating liquors
16 by persons under the age of twenty-one (21) without a parent's or guardian's knowledge
17 or consent or the order of a practicing physician, or as part of a religious ceremony, or
18 failing to use reasonable control and ordinary care to keep persons under the age of
19 twenty-one (21) from consuming intoxicating liquors on one's property.

20 (11) The sale of alcoholic beverages at any place other than a valid (not
21 suspended or revoked) licensed premises, Section 60-7A-4.1 NMSA; or the unlawful
22 manufacture of alcoholic beverages, Section 60-7A-7 NMSA; or

23 (12) Dog fighting, Section 30-18-9 NMSA; or

24 C. A loud or unruly gathering as defined in this Section.

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

1 E. A nuisance consists of knowingly creating, performing or maintaining anything
2 affecting any number of citizens without lawful authority which is either:

3 (1) Injurious to public health, safety, morals or welfare; or

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

6 *Real property* means land and all improvements, buildings, and structures, and all estates
7 rights and interests, legal and equitable, in the same, including, but not limited to, all forms of
8 ownership and title, future interests, condominium rights, time-share rights, easements, water
9 rights, mineral rights, oil and gas rights, space rights, and air rights.

10 *Residence or other private property* means a home, yard, apartment, condominium, hotel
11 or motel room, or other dwelling unit, or a hall or meeting room, whether occupied on a
12 temporary or permanent basis, whether occupied as a dwelling, party or other social function, and
13 whether owned, leased, rented, or used with or without compensation.

14 *Response costs* means the costs associated with responses by law enforcement, fire and
15 other emergency response providers to loud or unruly gatherings including, but not limited to:

16 A. Salaries and benefits of law enforcement, fire or other emergency response
17 personnel for the amount of time spent responding to, remaining at, or otherwise dealing with
18 loud or unruly gatherings, and the administrative costs attributable to such response(s);

19 B. The cost of any medical treatment to or for any law enforcement, fire or other
20 emergency response personnel injured responding to, remaining at or leaving the scene of a loud
21 or unruly gathering;

22 C. The cost of repairing any city equipment or property damaged, and the cost of the
23 use of any such equipment, in responding to, remaining at or leaving the scene of a loud or unruly
24 gathering.

25 *Responsible person* means a person or persons with a right of possession in the residence

1 or other private property on which a public nuisance is located, including, without limitation:

- 2 A. An owner of the residence or other private property;
- 3 B. A tenant or lessee of the residence or other private property;
- 4 C. The landlord of another person responsible for the gathering;
- 5 D. The person(s) in charge of the residence or other private property; and
- 6 E. The person(s) who organizes, supervises, officiates, conducts or controls the
- 7 gathering or any other person(s) accepting responsibility for such a gathering.

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

11 *Underage person* means any person under twenty-one years of age.

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

16 **Section 4. A new Section 10-9.4 SFCC 1987 is ordained to read:**

17 **10-9.4 [NEW MATERIAL.] Responsibility.**

18 A. Every owner, occupant, lessee or holder of any possessory interest of a residence
19 or other private property within the city of Santa Fe is required to maintain, manage and supervise
20 the property and all persons thereon in a manner so as not to violate the provisions of this
21 Ordinance. The owner of the property remains liable for such violations regardless of any
22 contract or agreement with any third party regarding the property.

23 B. The responsible person shall not conduct, aid, allow, permit or condone a public
24 nuisance at a residence or other private property.

25 C. If a responsible person for the nuisance is a juvenile, then the parents or

1 guardians of that juvenile and the juvenile will be jointly and severally liable for the response
2 costs incurred pursuant to this Ordinance.

3 D. To incur liability for response costs imposed by this Ordinance, the responsible
4 person for the nuisance need not be present when the nuisance occurs which results in the
5 response giving rise to the imposition of response costs. This Ordinance therefore imposes
6 vicarious as well as direct liability upon a responsible person.

7 **Section 5. A new Section 10-9.5 SFCC 1987 is ordained to read:**

8 **10-9.5 [NEW MATERIAL] Warning Issued.**

9 A. When a law enforcement, fire or other emergency response provider official
10 makes an initial response to a nuisance at a residence or other private property within the city of
11 Santa Fe, the official shall inform any responsible person(s) for the nuisance at the scene that:

12 (1) The official has determined that a nuisance exists; and

13 (2) Responsible person(s) will be charged for any response costs required for
14 subsequent responses to the scene for a nuisance within a twelve-month period. Only one
15 warning will be given to a responsible person(s) pursuant to this Section before the city
16 of Santa Fe assesses response costs pursuant to Section 10-9.6 SFCC 1987. If a
17 responsible person cannot be identified at the scene, the official may issue a warning to
18 one or more persons identified in Section 10-9.4 SFCC 1987 or subsequently return to the
19 residence or other private property and issue the warning to a then-present responsible
20 person. Warnings given to responsible persons who do not reside at the residence or other
21 private property in question shall be delivered by certified mail.

22 B. A warning given pursuant to this Section shall remain in effect for the residence
23 or other private property at a given address until a full twelve month period has elapsed during
24 which there have been no response to a nuisance at that residence or other private property.

25 **Section 6. A new Section 10-9.6 SFCC 1987 is ordained to read:**

1 **10-9.6 [NEW MATERIAL] Recovery of Response Costs.**

2 When law enforcement, fire or other emergency response provider responds to a nuisance
3 at a residence or other private property within the city of Santa Fe within a twelve month period
4 of a warning given to a responsible person for a nuisance, all responsible persons shall be jointly
5 and severally liable for the city's costs of providing response and for all subsequent responses
6 during the warning period according to the schedule of cost recovery established by the police
7 department. The cost recovery schedule shall be available at the city's police department and at
8 the city clerk's office.

9 **Section 7. A new Section 10-9.7 SFCC 1987 is ordained to read:**

10 **10-9.7 [NEW MATERIAL] Billing and Collection.**

11 A. The amount of response costs shall be deemed a debt owed to the city of Santa Fe
12 by the responsible person held liable in Section 10-9.4 SFCC 1987 for the nuisance and, if a
13 juvenile, by the juvenile's parents or guardians. Notice of the costs for which the responsible
14 person is liable shall be mailed via certified mail within 14 days of the response giving rise to
15 such costs. The notice shall contain the following information:

- 16 (1) The name of the person(s) being held liable for the payment of such
17 costs;
- 18 (2) The address of the residence or other private property where the nuisance
19 occurred;
- 20 (3) The date and time of the response;
- 21 (4) The law enforcement, fire or emergency service provider who responded;
- 22 (5) The date and time of any previous warning given pursuant to Section 10-
23 9.5 SFCC 1987 and previous responses to nuisances at the residence or other private
24 property in question within the previous twelve months; and
- 25 (6) The recovery cost assessed as set forth in the cost recovery schedule.

1 B. The responsible person shall remit payment of the noticed response cost to the
2 city of Santa Fe within sixty days of the date of the notice.

3 C. The city may place a lien upon property where the nuisance occurred for any
4 costs not paid within three (3) months of notice in paragraph A. above.

5 **Section 8. A new Section 10-9.8 SFCC 1987 is ordained to read:**

6 **10-9.8 [NEW MATERIAL] Reservation of Legal Options.**

7 Nothing in this Ordinance shall be construed as a waiver by the city of Santa Fe of any
8 right to seek reimbursement for actual costs of response services through other legal remedies or
9 procedures. The procedures provided for in this Ordinance are in addition to any other statute,
10 ordinance or law, civil or criminal. This Ordinance in no way limits the authority of peace
11 officers or private citizens to make arrests for any criminal offense arising out of conduct
12 regulated by this Ordinance.

13 **Section 9. A new Section 10-9.9 SFCC 1987 is ordained to read:**

14 **10-9.9 [NEW MATERIAL] Appeals.**

15 Any person upon whom is imposed response costs pursuant to Section 10-9.4 SFCC 1987
16 shall have the right to petition district court for writ of certiorari pursuant to Rule 1-075 NMRA.

17 **Section 10. Section 10-9.4 SFCC 1987 (being Ord. #2005-1, §11) is amended to**
18 **read:**

19 **10-9.10 Procedures in General.**

20 A. The remedies provided in this Article are cumulative and supplementary to each
21 other to the criminal remedies provided by any criminal ordinance or statute, to other civil
22 remedies, and any administrative proceedings to revoke, suspend, fine, or take other action
23 against any license. The city may pursue the remedies provided in this Article, or other
24 ordinances or statutes, other civil actions or remedies, administrative proceedings against a
25 license, or any one (1) or more of them, and may do so simultaneously or in succession.

1 B. All actions under this Article are civil and remedial in nature.

2 C. The city attorney for the city of Santa Fe may file a civil action to abate any
3 nuisance in the District Court for the First Judicial District. Investigation and assistance to the city
4 attorney shall be by persons designated by the city manager. A private citizen, in the name of the
5 city may also bring an action under this Article.

6 D. Actions under this Article may affect the use, possession, enjoyment, and title to
7 real property. Accordingly, the city may file and record a notice of lis pendens against the real
8 property involved.

9 E. The defendants to an action under this Article and the persons liable for the
10 remedies in this Article may include the property itself and any persons owning or claiming any
11 legal or equitable interest or right of possession in the property.

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

14 **Section 11. Section 10-9.5 SFCC 1987 (being Ord. #2005-1, §12) is amended to**
15 **read:**

16 **10-9.11 Supplementary Remedies for Public Nuisances.**

17 In any action in which the existence of a public nuisance is established, the city may
18 request in addition to other remedies permission to enter upon the real property, or take action
19 with respect to personal property, and abate the nuisance or take steps to prevent public nuisances
20 from continuing. The city shall be entitled to recover the costs incurred in abating the nuisance.

21 **Section 12. Section 10-9.6 SFCC 1987 (being Ord #2005-1, §13) is amended to**
22 **read:**

23 **10-9.12 Severability.**

24 The requirements and provisions of this Article and their parts, subparts and clauses are
25 severable. In the event that any requirement, provision, part, subpart or clause of this Article, or

1 the application thereof to any person or circumstance, is held by a court of competent jurisdiction
2 to be invalid or unenforceable, it is the intent of the governing body that the remainder of the
3 section be enforced to the maximum extent possible consistent with the governing body's purpose
4 of abating public nuisances.

5 **Section 13. Section 10-9.7 SFCC 1987 (being Ord. No. 2001-8, §4) is amended to**
6 **read:**

7 **10-9.13 Right of Entry of Inspection Officer for Examination of Premises.**

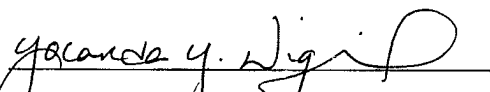
8 The inspection officer may enter, at all reasonable times, if the inspection officer has the
9 occupant's or custodian's consent, any house or premises within the city to ascertain the existence
10 of any nuisance. If the occupant's or custodian's consent is refused or is otherwise unobtainable,
11 an inspection order may be sought or an emergency inspectorial search conducted pursuant to the
12 procedures set forth in Sections 24-1-16 through 24-1-19 NMSA 1978 of the Public Health Act.
13 The inspection officer may investigate the conditions found and make reports provided, that such
14 entering and investigation are for the sole purpose of ascertaining the conditions entrusted to their
15 supervision; provided further that their reports are limited to matters pertaining to their duties.

16 PASSED, APPROVED and ADOPTED this 23rd day of February, 2011.

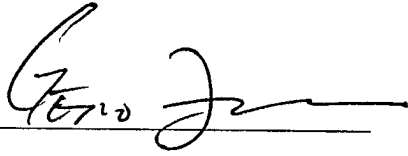
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20 DAVID COSS, MAYOR

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22 ATTEST:

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24 
25 YOLANDA Y. VIGIL, CITY CLERK

1 APPROVED AS TO FORM:

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4 GENO ZAMORA, CITY ATTORNEY

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Jp/ca/jpmb/2011 ord/nuisance revisions