

CITY OF HOBBS

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF HOBBS, NEW MEXICO REGARDING  
NUISANCE ABATEMENT AND PROBLEM PROPERTY FORFEITURE

WHEREAS, pursuant to New Mexico Statutes, a municipality may, for the purpose of providing for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the municipality and its inhabitants provides process for identification and abatement of property that has become a public nuisance; and

WHEREAS, the municipality proposes implementing an ordinance providing for abatement regulations as proposed herein which are designed to reduce potential impacts to public welfare from these public nuisance properties.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that:

ARTICLE I. IN GENERAL

SECTION I. PURPOSE AND INTENT.

The purpose of this ordinance is to prevent the use of real property, vehicles and personal property as a public nuisance.

SECTION II. DEFINITIONS.

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

- A. Abate: To bring to a halt, eliminate or, where that is not possible or feasible, to suppress, reduce, and minimize.

- B. Building: A *structure*, hereinafter defined, which is enclosed with walls and a roof so that there are no sides left open.
- C. Close, to close, or closure: To seize the property and remove all owners, tenants, occupants and other persons and animals from the real property, vehicle, or personal property, or a specified discrete portion thereof, and to lock, board, bar, or otherwise close and prohibit all entry, access, and use of the real property, vehicle, or other personal property, or a specified discrete portion thereof, except such access and use as may be specifically ordered by the Court for purposes of inventory, maintenance, storage, security, and other purposes, and to vest the sole right of possession and control of the real property, vehicle, or personal property, or a specified discrete portion thereof, in the City for a limited period of time defined by Court order. In the case of a vehicle, closure includes impoundment.
- D. Contraband: Any personal property which is illegal to own.
- E. Commission's Designee: The person(s) or entity(ies) appointed by the City Commission to enforce this ordinance.
- F. Criminal Street Gang: Any ongoing organization, association in fact, or group of three or more persons, whether formally or informally organized, or any sub-group or affiliated group thereof having as one of its primary activities the commission of one or more criminal acts or illegal acts, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or have engaged in

a pattern of *criminal gang activity*, hereinafter defined, for a one-year period.

G. Flight: To flee, escape, or leave the place where the public nuisance activity was committed or conducted.

H. Legal or Equitable Interest or Right of Possession: Every legal or equitable interest, title, estate, tenancy, or right of possession recognized by law and equity, including, but not limited to, freeholds, life estates, future interests, condominium rights, time share rights, leaseholds, easements, licenses, liens, deeds of trust, contractual rights, mortgages, security interests, and any right or obligation to manage or act as agent or trustee for any person holding any of the foregoing.

I. Parcel: Any lot or other unit of real property or any combination of contiguous lots or units owned by the same *person*, hereinafter defined.

J. Pattern of Criminal Gang Activity: The commission, attempt to commit, conspiring to commit, or solicitation of two or more predicate gang crimes, provided the criminal acts were committed on separate dates or by two or more persons who are members of, or belong to, the same criminal gang within a one-year period.

K. Person: Natural persons and every legal entity whatsoever, including, but not limited to, sole proprietors, corporations, limited liability companies, partnerships, limited partnership, and associations.

L. Personal Property: All property of every kind and nature whatsoever, including cash, vehicles, animals, intangible property and contraband, but not including real property of any kind.

K. Predicate Gang Crime:

1. A state offense:
  - a. Involving a controlled substance (as defined in Section 30-31-2 NMSA 1978, as amended, and/or Section of the Controlled Substances Act (21 U.S.C. 802)) for which the maximum penalty is imprisonment for not less than five years;
  - b. That is a felony crime of violence that has as an element the use or attempted use of physical force against the person of another; or
2. Any federal or state felony offense that by its nature involves a substantial risk that physical force against the person of another may be used in the course of committing the offense, including:
  - a. Assault with a deadly weapon;
  - b. Aggravated battery;
  - c. Intimidation;
  - d. Compelling organizational membership;
  - e. Homicide or manslaughter;
  - f. Shooting at an occupied dwelling or motor vehicle;
  - g. Kidnapping;

- h. Car jacking;
  - i. Robbery;
  - j. Residential burglary;
  - k. Drive-by shooting;
  - l. Unlawful use or possession of weapons;
  - m. Bribery;
  - n. Tampering with or retaliating against a witness, victim, informant, or juror;
  - o. Rape;
  - p. Torture; or
  - q. Arson; or
3. Any federal or state offense involving:
- a. Money laundering;
  - b. Felony vandalism;
  - c. Unlawful sale of a firearm; or
  - d. Obstruction of justice.

N. Property: Property of all kind, including *real property* and *personal property*, hereinafter defined.

O. Public Nuisance:

- 1. Any parcel of real property, commercial or residential, any personal property, or any vehicle on or in which any of the following illegal activities occurs, or which is used to commit, conduct, promote, facilitate, or aid the commission of or flight from any of the following activities. For

purpose of this ordinance, the illegal activity shall have the same definition as that contained in the section of the New Mexico Statutes Annotated (NMSA) 1978 as amended or Hobbs Municipal Code (HMC) (2001) as amended, listed after the illegal activity:

- a. Prostitution, Section 30-9-2 (NMSA) Section 9.12.050 (HMC); Patronizing prostitutes, Section 30-9-3 (NMSA) Section 9.12.060 (HMC); Promoting prostitution, Section 30-9-4 (NMSA); or Accepting earnings of a prostitute, Subsection 30-9-4.1 (NMSA);  
or
- b. Sexual exploitation of children by prostitution, Section 30-6A-4 (NMSA); or
- c. Sexual exploitation of children, Section 30-6A-3 (NMSA); or
- d. Trafficking controlled substances, Section 30-31-20 (NMSA); Distribution of a controlled substance to a minor, Section 30-31-21 (NMSA); Distribution of a controlled or counterfeit substance, Section 30-31-22 (NMSA); Possession of a controlled substance, Section 30-31-23 (NMSA) Section 9.28.020 (HMC);  
Manufacture, distribution, or possession of an imitation controlled substance, Section 30-31A-4

(NMSA); Sale of an imitation controlled substance to a minor, Section 30-31A-5 (NMSA); or

e. Possession, delivery or manufacture or delivery to a minor of drug paraphernalia, Subsection 30-31-25.1 (NMSA) Section 9.28.010 (HMC); or

f. Commercial gambling, Section 30-19-3 (NMSA); Permitting premises to be used for gambling, Section 30-19-4 (NMSA); Dealing in gambling devises, Section 30-19-5 (NMSA); or

g. Three (3) or more incidents occurring within any one hundred eighty (180) day period giving rise to convictions of disorderly conduct, Section 30-20-1 (NMSA), and Section 9.12.020 (HMC); or

h. Any criminal activity by a criminal street gang as defined herein; or

i. Sale of alcoholic beverages at any place other than a valid (not suspended or revoked) licensed premises, Section 60-7A-4.1 (NMSA) 5.44.020 (HMC); Manufacture of alcoholic beverages, Section 60-7A-7 (NMSA); or

j. Assault upon a peace officer, Section 30-22-21 (NMSA) Section 9.08.070 (HMC); Aggravated assault upon a peace officer, Section 30-22-22 (NMSA);

Assault with intent to commit a violent felony upon a peace officer, Section 30-22-23 (NMSA); Battery upon a peace officer, Section 30-22-24 (NMSA);

Aggravated battery upon a peace officer, Section 30-22-25 (NMSA); Assisting in assault upon a peace officer, Section 30-22-26 (NMSA); Disarming a peace officer, Section 30-22-27 (NMSA); or

k. Three (3) or more incidents occurring within any one hundred eighty (180) day period giving rise to convictions of unreasonable noises, Chapter 8.20 HMC; or

l. Violations of Hobbs Municipal Code defining unsanitary premises and unlawful dumping, Sections 8.36.010 to 8.36.130; or

2. A public nuisance shall include and is further defined as any parcel of real property, commercial or residential, that is the subject of or that has been involved with calls for service to any law enforcement agency(ies) for violations of the statutes and ordinances cited in Article I, Section II (O) defining *public nuisance* and shall include a repeated pattern of calls for service and complaints of vagrants, suspicious persons, suspicious cars, general calls for welfare checks, disorderly conduct, domestic violence, domestic altercations, domestic disputes, loud parties,

loud music, neighborhood complaints, noise ordinance violations, and public drunkenness and shall be subjected to the imposition of penalties for public nuisance as provided by Article II, Section II of this ordinance.

Q. Real Property: Land and all improvements, buildings, and structures, and all estates rights and interests, legal and equitable, in the same, including, but not limited to, all forms of ownership and title, future interests, condominium rights, time share rights, easements, water rights, mineral rights, oil and gas rights, space rights, and air rights.

R. Receivership: The special receivership on the terms set out in the Receivership Act and as applied in Article II, Section III (B) below.

S. Resident: One or more people entitled under a rental agreement to occupy all or a portion of a residential building to the exclusion of others and who actually reside at such locations.

T. Resident Removal: The removal of resident(s) from their residential building as a result of an action filed by the City of Hobbs under the authority of Article III, Section II, or a comparable proceeding authorized by ordinance, statute or common law, to abate a nuisance resulting in the seizure, closure, receivership, sale or destruction of the residential unit.

U. Residential Building: A building or portion thereof designed or used for human habitation.

V. Structure: Anything constructed, erected, or placed upon real property which is so firmly attached to the land as to be reasonably considered part of the real estate, and includes buildings of every type and nature whatsoever.

W. Tenant: Any person who uses, resides in, or occupies property identified as a public nuisance, regardless of whether the tenant has the consent of the owner to use, reside, or occupy the property.

X. Vehicle: Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devices moved exclusively by human power or used exclusively upon stationary rails or tracks.

## ARTICLE II. CRIMINAL ABATEMENT

### SECTION I. PUBLIC NUISANCES PROHIBITED.

A. It shall be unlawful for any owner, manager, tenant, lessee, occupant, or other person having any legal or equitable interest or right of possession in any real property, vehicle, or other personal property to intentionally, knowingly, recklessly, or negligently commit, conduct, promote, facilitate, permit, fail to prevent, or otherwise let happen, any public nuisance in, on or using any property in which they hold any legal or equitable interest or right of possession.

B. An owner of property whose own activities on the real property are not a public nuisance shall not be in violation of this ordinance if the owner

has no knowledge of the public nuisance activity and, upon receiving notice of the activity constituting a nuisance, the owner:

1. Demonstrates to the City that the rental agreement for the property contains a provision prohibiting criminal activity;
2. Delivers to the tenant(s) a written notice of termination of the rental agreement as provided by the New Mexico Owner-Resident Relations Act or the Mobile Home Park Act;
3. Files an appropriate report with law enforcement authorities or otherwise cooperates with such authorities in enforcing laws with respect to tenants on the property;
4. Initiates appropriate legal action to remove residents involved in criminal activity where such activity can be proven; and
5. Takes all reasonable and available steps to terminate the public nuisance activity; and
6. Enters into a written Nuisance Abatement Agreement with the City of Hobbs wherein the property owner agrees to take specific steps including but not limited to providing on-site security or otherwise take action that will abate, terminate or eliminate the public nuisance activity on the property in exchange for the City of Hobbs reserving its rights and agreeing not to initiate any legal action for public nuisance against the property owner during the term of the agreement provided that the property owner complies with the terms and conditions of the written Nuisance Abatement

Agreement and the public nuisance is eliminated, abated or terminated.

## SECTION II. PENALTIES.

A. Any person who violates any provision of this ordinance shall, upon conviction, be subject to a fine not exceeding \$500 or by imprisonment not exceeding 90 days or both. Each separate violation shall constitute a separate offense, and every day on which any violation exists shall constitute a separate violation and offense.

B. Upon conviction of violation of this ordinance, the City shall register the violating property with the City Agencies and/or the County Clerk.

C. Conditions of Suspended Sentences: In the event that the Court chooses to suspend any portion of the fine or sentence for a violation of this ordinance, the City shall request that the Court make the suspended sentence expressly conditional on the following terms:

1. The defendant must evict, remove, and permanently bar from entering the property any persons who committed the criminal activity forming the basis of the public nuisance, including, but not limited to, the defendant himself, his or her family members and relatives, and owners, tenants, occupants, guests, and other persons. This may be accomplished through forcible entry and detainer actions, sale of the property, new leases of the property, or other legal action as needed; and

2. The defendant must take steps to abate the public nuisance, eliminate its past and continuing adverse effects on the neighborhood, and prevent public nuisances from recurring on the property, including, but not limited to landlord training, tenant background checks and screening, improvements to the property, including general repairs which will bring the property into compliance with City Building Code, Title 15 of this code, and including fencing, lighting, and destruction of buildings, modifications to leases, security guards, removal of trash, junk, and graffiti, and compliance with all other applicable City Codes; and
3. Any other conditions the Court deems appropriate.

A. Posting and Publication of Public Nuisance Convictions: Upon the conviction of any person for violating this ordinance and after the time for any appeal has expired, in addition to any fine and/or jail sentence, the City may file in the office of the County Clerk a certificate describing the real property and that it has been found to be a public nuisance. The City may also post such notices in prominent places on the real property on which the public nuisance occurred. These notices may be attached to any structure on the real property. The City shall have the right to enter the real property for the purpose of erecting, affixing, maintaining and removing these notices. The City may also publish or release notices describing the property and stating that it has been found to be a public nuisance in or to newspapers, periodicals, magazines, fliers and other

print media, and may release such notices to television, radio and cable media. The notices and releases may contain the property address, the names of the defendants convicted and all persons holding any legal or equitable interest in the property, photographs of the defendants and all persons holding any legal or equitable interest in the property, photographs of the property and the nuisance activity, a narrative description of the nuisance activity involved, a statement that the property constitutes a public nuisance, the court's sentence including any suspended sentence, and the conditions of the same, and may invite the public to contact the City regarding any further nuisance activity or violations of the sentence. The City may post the property and release or publish the notices provided above for a period not to exceed one year from the conviction, or, in the event that the conviction is appealed, one year from the date the conviction is affirmed. The posting and/or publishing will be suspended during the appeal process. It shall be unlawful for any person to interfere with, remove, obliterate, obscure, cover, or destroy any notice posted pursuant to the provisions of this section.

B. Additional and Alternative Remedies: In addition or in the alternative to the criminal fines, sentences, conditions of suspended sentences, posting, publication, media releases and other sanctions provided above, the City may also seek administrative remedies against any licensee including the revocation and/or non-issuance of a City

business license and any of the civil remedies provided in this ordinance. These remedies shall be cumulative, and the City may pursue one or more of them, simultaneously or in succession.

### ARTICLE III. CIVIL ABATEMENT.

#### SECTION I: 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 actions provided in this Article are designed to abate public nuisances by removing the property and vehicles from criminal use and as a base of criminal operations, to ensure that criminal activity and the use of the property for criminal purposes is unprofitable, to require that the profits of criminal activity be disgorged, to make property owners vigilant in preventing public nuisances on, in, or using their property and responsible for the lawful use of their property by tenants, guests and occupants, and to deter 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 who hold these rights. The remedial actions provided in this Section are intended to be civil in nature. The remedies of seizure, temporary restraining order, closure, *receivership*, sale, and/or destruction are intended to be in rem, against the property itself, and not against any individual directly.

However, the remedies of temporary restraining order, civil judgment, and permanent injunction may be partially in personam.

B. In order to ensure that the remedies provided in this Article are applied in good faith and for the purposes of public nuisance abatement, the following shall apply:

1. No City employee's or law enforcement officer's employment or level of salary shall depend upon the frequency or quantity of actions and remedies under this ordinance that he or she produces.

2. All seizures of real property shall be made pursuant to a temporary restraining order based upon a judicial finding of probable cause and only after an opportunity for an adversarial hearing to contest the seizure has been provided.

C. This Article is not intended to authorize any act expressly prohibited by state law, nor to forbid any conduct expressly authorized by state law. The provisions of this Article shall be construed to avoid any such direct and express conflict.

D. The Sections of this Article are intended to provide a comprehensive scheme for civil public nuisance abatement and should be read together.

## SECTION II. PROCEDURE IN GENERAL.

A. Remedies Cumulative: The remedies provided in this Article are cumulative and supplementary to the criminal penalties provided in Article II of this ordinance, the criminal remedies provided by any other criminal

ordinance or statute, other civil remedies, and any administrative proceedings to revoke, suspend, fine, or take other action against any license. The City may pursue the remedies provided in this Article, the criminal penalties provided in Article II of this ordinance or other ordinances or statutes, other civil actions or remedies, administrative proceedings against a licensee, or any one or more of them, and may do so simultaneously or in succession.

B. Pursue Both Criminal and Civil Remedies: In the event that the City pursues both the criminal penalties in Article II, the criminal remedies provided in any other section, other civil remedies, or the remedies of any administrative action and the remedies in Article III, the civil actions provided in this Article shall not be delayed or held in abeyance pending the outcome of any proceedings in the criminal, civil or administrative action, or any action filed by any other person, unless all parties to the action under Article III so stipulate.

C. Actions Are Civil and Remedial: All actions under this Article are civil and remedial in nature. All seizure, closure, receivership, sale and destruction remedies under this section shall be in rem. Injunctive remedies under this section may be partly in peronsam.

D. Actions Brought by City/District Attorney or Citizen: Actions under this Article shall be filed by the City Attorney for the City of Hobbs and/or by the District Attorney for the Fifth Judicial District. A private citizen, in the name of the state, may also bring an action under this Article.

E. Authority: Actions under Article III shall be in accordance with the New Mexico Rules of Civil Procedure and the New Mexico Rules of Evidence.

F. Affect on Real Property: Actions under Article III may affect the use, possession, enjoyment, and title to real property. Accordingly, the City may file and record a notice of lis pendens against the real property involved.

G. Action Commenced by Filing: An action under this Article shall be commenced by the filing of a verified complaint or a complaint verified by an affidavit and a motion for temporary restraining order in accordance with the New Mexico Rules of Civil Procedure.

H. Possible Defendants Identified: The defendants to an action under this Article and the persons liable for the remedies in this section may include the property itself, any persons owning or claiming any legal or equitable interest or right of possession in the property, all tenants and occupants at the property, managers and agents for any person owning or claiming a legal or equitable interest in the property, any persons committing, conducting, promoting, facilitating or aiding the commission of or flight from a public nuisance, and any other persons whose involvement may be necessary to abate the nuisance, prevent it from recurring, or to carry into effect the court's orders for temporary restraining orders, seizures, closures, receiverships, permanent injunctions, liens, sales and/or destruction. Any person holding any legal or equitable interest or

right of possession in the property who has not been named as a defendant may intervene.

I. Notification Before Filing Civil Action:

1. At least ten (10) calendar days before filing a civil action under this ordinance involving any seizure, closure, or receivership of real property, the City Manager or Commission's Designee shall post a notice at the main entrances to the buildings or at some other prominent place on the real property. The City Manager or Commission's Designee shall also mail a notice by certified mail, return receipt requested, to the owner(s) of the real property and to the holder(s) of the last deed of trust or mortgage recorded on the real property. The mailing of the notice shall be deemed sufficient if mailed to the owner(s) and the holder(s) of the last recorded deed of trust or mortgage at the address(es) shown on the records of the Lea County Clerk and/or the Lea County Assessor's office. The posted and mailed notices shall state that the real property has been identified as a public nuisance and that a civil action under this ordinance may be filed.
2. The City Manager or Commission's Designee is authorized to enter upon the property for the purpose of posting notice and to affix the notice in any reasonable manner to any buildings or structures.

3. The City Manager or Commission's Designee shall not be required to post or mail any notice specified in Paragraph I.1 of Section II of this Article whenever he or she determines, in his or her sole discretion, that any of the following conditions exist:
  - a. The public nuisance poses a threat to public safety; or
  - b. Notice could jeopardize a pending investigation of criminal or public nuisance activity, confidential informants, or other police activity; or
  - c. Notice could result in sale, transfer, encumbrance or destruction of the property; or
  - d. Other emergency circumstances exist; or
  - e. The owner(s) and the holder(s) of the last recorded deed of trust or mortgage have been notified, in writing, within the last one hundred twenty (120) days that the property has been identified as a public nuisance and that a civil action under this ordinance may be filed.
4. It shall be unlawful for any person other than the City Manager or Commission's Designee to remove any notice posted under the provisions of this paragraph.

### SECTION III. TEMPORARY RESTRAINING ORDERS.

- A. Temporary Restraining Orders in General.
  1. Intent. Public nuisances are real, direct and immediate threat to the health, safety, and welfare of the people of Hobbs.

Public nuisances cause immediate and irreparable injury, damages and losses to the citizens of Hobbs and their governmental agencies. Actions at law are not always an adequate remedy, and the protection of public health, safety, and welfare may require the temporary restraining ordered provided in this section. Ex parte temporary restraining orders are necessary to provide rapid relief from public nuisances without the delay which can result from an adversarial hearing and personal service and to prevent persons from removing, concealing, destroying, encumbering, selling or transferring property that may be the subject of the remedies in this ordinance. The issuance and execution of temporary restraining orders under Article III of this ordinance shall not be deemed a bailment of property. The owner(s) of the property remain responsible for the maintenance and security of property subject to temporary restraining orders and shall be permitted reasonable access to the property for these purposes upon application to the Court.

2. Form of proposed temporary restraining order. Every temporary restraining order proposed by the City under Article III of this ordinance shall set forth the reason for its issuance, be reasonably specific in its terms, and describe in reasonable detail the acts and conditions authorized, required or prohibited, and shall be in accordance with the New Mexico Rules of Civil Procedure.

- B. Temporary Restraining Orders; Public Nuisances.
1. Seizure of Vehicles and Other Personal Property Not Within Buildings, and Restraining Orders to Persons Concerning Real Property, Vehicles, Other Personal Property and Public Nuisances. The City shall petition the Court to issue a temporary restraining order that makes the following orders for seizure of vehicles and other personal property not contained within buildings and restraining persons as to real property, vehicles, other personal property, and public nuisances, which orders shall be served and become effective pursuant to the New Mexico Rules of Civil Procedure:
    - a. The City Manager or Commission's Designee or any police officer to seize and close vehicles and other personal property not contained within any building on real property, using any reasonable force necessary, and to place the same in police custody, or to retain the same in police custody if previously seized, in the constructive custody of the Court, until further order of the Court. All towing and storage costs shall be by the owner(s) of the vehicle or other personal property.
    - b. Persons to deposit with the City Manager or Commission's Designee or any police officer documents evidencing title, registration and keys, combination numbers,

magnetic cards and other devices for accessing the vehicles and other personal property.

c. The City Manager or Commission's Designee or any police officer or sheriff's deputy to post the summons, complaint, and temporary restraining order on the real property to serve copies upon any person who reasonably appears or claims to hold any legal or equitable interest or right of possession in the property.

d. To restrain all persons from removing, concealing, damaging, destroying, or selling, giving away, encumbering or transferring any interest in vehicles, other personal property, fixtures, structures, or real property, or the contents of the same, or using any of the property as security for a bond.

e. Persons holding any legal or equitable interest or right of possession in the real property, vehicle, or other personal property to take steps to abate the public nuisance and prevent it from recurring.

f. The City Manager or Commission's designee or any police officer to take reasonable steps to abate the nuisance activity and prevent it from recurring.

g. To require certain named individuals to stay at least 200 yards away from the property at all times.

h. Any other orders that may be reasonably necessary to take the property into the Court's constructive custody and to access and safeguard the property.

2. Seizure of Real Property and Vehicles and Other Personal Property Within Buildings. In addition to the orders above, the City shall petition the Court to include in the temporary restraining order the following orders with respect to the seizure of the real property and the contents of the buildings, which orders shall be served and become effective pursuant to the New Mexico Rules of Civil

Procedure:

a. The City Manager or Commission's Designees or any police officer to enter upon, seize, and close the real property, and buildings and structures upon the real property and the contents of the same, using any reasonable force necessary.

b. Persons holding any legal or equitable interest or right of possession in the real property or personal property to deposit with the City Manager or Commission's Designee or any police officer documents evidencing title, registration and keys, combination numbers, magnetic cards and other devices and information for accessing the real property and any building, structures, vehicles and other personal property contained thereon until further order of the Court.

c. Persons holding any legal or equitable interest or right of possession in the real property to provide for the maintenance, utilities, insurance and security of the property. The City shall petition the Court to permit these persons reasonable access to perform these duties or, at the discretion of the City Attorney, to permit the City Manager or Commission's Designee to perform these duties in lieu of the owners. If the City Manager or Commission's Designee chooses to perform the duties, the owner(s) shall be responsible for all costs incurred.

d. Where real property involved contains three or more apartments or other individualized rental units, the City may petition the Court to order in lieu of closure, but in addition to the other orders provided above, that certain named individuals who committed, conducted, promoted, facilitated or aided the commission of a public nuisance be removed from the property, but that other persons lawfully on the premises be permitted to remain, and the property be placed in a special receivership as provided in this Section. The City shall request that a receiver appointed ex parte by the Court take possession of the property to the exclusion of the owner(s) and other persons holding any legal or equitable interest and their managers and agents then in possession,

collect rents from the tenants, and pay the operating expenses, taxes, utilities, and maintenance expense on the property including the cost of abating public nuisances and preventing the same from recurring. The receiver shall not pay the principal or interest on any note, deed of trust, mortgage, installment land contract similar in tenor, and these obligations shall remain in the real property. The City shall petition the Court to periodically award the receiver reasonable fees for his or her services to be paid out of the rents, profits, and income. The receiver shall account for all income and expenses in accordance with the laws of New Mexico. The City shall petition the Court to order the defendants to pay the fees and expenses of the receiver, utilities, maintenance, security, operating expenses, taxes, insurance and other reasonable expenses related to the property to the extent that the rents, income, and profits of the property are insufficient to defray the same. The receiver appointed ex parte shall not be replaced except upon the stipulation of all parties. The City may petition the Court to make other reasonable orders consistent with these provisions for the administration of this special receivership.

e. Any other orders that may be reasonably necessary to access, maintain, and safeguard the property.

3. Motion to Vacate or Modify Temporary Restraining Order or for Return of Seized Property. Any defendant or any person holding any legal or equitable interest or right of possession in any property seized or restrained under this ordinance may file a motion to vacate or modify the temporary restraining order or for return of seized property. Proceedings on these motions shall be in accordance with the New Mexico Rules of Civil Procedure and applicable laws.

#### SECTION IV. REMEDIES FOR PUBLIC NUISANCES.

Where the existence of a public nuisance is established in a civil action under this Article, the City shall petition the Court to enter permanent prohibitory and mandatory injunctions requiring the defendants to abate the public nuisance and take specific steps to prevent the same and other public nuisances from occurring on the real property, in the vehicle, or use of the real property, vehicle or other personal property. The permanent prohibitory and mandatory injunction requested by the City may allow the Court to consider other remedies as necessary and provided by law to abate the public nuisance. The City shall also petition the Court to order, as to any real property, vehicle or other personal property used to commit, conduct, promote, facilitate or aid the commission of or flight from any public nuisance, the following remedies:

A. Closure of Real Property and Destruction of Certain Structures:

That the real property be closed for a period of not less than one year and not more than three years from the date of the final judgment, plus any

extension of that period caused by failure to comply with the conditions for release of the property set out below, and if the City requests, that certain structures upon the real property be destroyed. The City may request the Court to order the defendant to carry out the destruction of the structures. The City shall petition the Court to order the defendant to provide for the maintenance, utilities, insurance, and security of the property during the period of closure, and that at the end of the closure period, the real property be released to the owner only upon:

1. Payment of all expenses incurred by the City for seizure, closure, utilities, security, access, destruction of buildings, maintenance, insurance, and other reasonable expenses; and
2. Payment of all civil judgments under this Article; and
3. Execution by all owners and other persons holding any legal or equitable interest or right of possession in the real property of a complete and unconditional release of the City and all of its employees and agents for liability for the seizure, closure and damages to the property.

In the event that the owners and other persons holding any legal and equitable interest an right of possession, or any of them, fail, neglect or refuse to pay the fees, expenses, and judgments, or to execute the release provided above, the property shall remain closed. However, if a year expires without the owner making payment, the property shall then forfeit to the City. The issuance and execution of the closure order shall not be deemed a bailment of property.

The owner of the property remains responsible for the maintenance and security of property subject to the closure order and shall be permitted reasonable access to the property for these purposes upon application to the court.

B. Receivership of Real Property and Destruction of Certain

Structures: That, when the City so requests, in lieu of closure of real property, the real property be placed into a special receivership for a period not less than one year and not more than three years from the date of final judgment, plus any extension of that period caused by a failure to comply with the conditions for release of the property set out below, and, if the City requests, that certain structures be destroyed. The City may request the Court to order the defendants to carry out the destruction. The City shall petition the Court to order the defendants to provide for and pay the maintenance, utilities, security, operating expenses, taxes, insurance, receivership fees, and other reasonable expenses related to the property to the extent that the rents, profits and income of the property under receivership is insufficient to defray these expenses, and that at the end of the receivership period, the real property shall be released to the owner only upon:

1. Payment of all expenses incurred by the City for seizure, closure, utilities, security, access, maintenance, insurance, taxes, receivership and receivership fees, the costs of destroying structures, and other reasonable expenses not covered by the rents, profits, and income under receivership; and
2. Payment of all civil judgments under this Article; and

3. Execution by all owners and other persons holding any legal or equitable interest or right of possession in the real property of a complete and unconditional release of the City and all of its employees and agents, including the receiver, for any liability for the seizure, closure and receivership and damages to the property.

4. In the event that the owners and other persons holding any legal or equitable interest or right of possession in the real property, or any of them, fail, neglect or refuse to pay the fees, expenses, and judgments, or to execute the release provided above, the property shall remain under the receivership or be closed as provided in Paragraph A above. The issuance and execution of the receivership order shall not be deemed a bailment of property. The owners of the property remain responsible for the maintenance and security of the property subject to the receivership order and shall be permitted reasonable access to the property for these purposes upon application to the Court. In the event that the income, rents and profits of the receivership, after a complete accounting, exceed the costs and expenses of access, seizure, closure, maintenance, security, taxes, insurance, destruction of structures, the receivership and receivership fees, and all other reasonable expenses related to the property, the City shall petition the Court to order the receiver to expend the remainder first on specific improvements at the property that will abate public nuisances or

prevent them from recurring, and second to pay the civil judgments due in the case.

C. Impoundment of Vehicles. That the vehicle be impounded for a period of not less than six months and not more than one year from the date of the final judgment plus any extension of the period caused by failure to comply with the conditions for release of the vehicle set out below; and that at the end of the closure period, the vehicle shall be released to the owner(s) only upon:

1. Payment of all towing fees, storage fees, and civil judgments under Article III; and
2. Execution by the owners and lienors of a complete and unconditional release of the City and all of its employees and agents for the closure and any and all damages to said vehicle.

In the event that the owners, lienors, or any of them fail, neglect or refuse to pay the fees, expenses, and judgments when due, and execute the release provided above, the vehicle shall be forfeited to the City. The issuance and execution of the closure order shall not be deemed a bailment of property.

D. Destruction of vehicles. Where the City so requests, in lieu of impoundment of the vehicle, that the vehicle be destroyed.

E. Forfeiture of personal property. That the personal property be forfeited to the City.

## SECTION V. JUDGMENT FOR COSTS AND ATTORNEYS' FEES.

In any case in which a public nuisance is established, in addition to the remedies provided above, the City may petition the Court for a separate civil judgment for the City's costs and attorneys' fees against every person who committed, conducted, promoted, facilitated, or aided in the commission of any public nuisance or who held any legal or equitable interest or right of possession in any real property or vehicle on or in which any public nuisance occurred, or any real property, vehicle or other personal property used to commit, conduct, promote, facilitate or aid the commission of any public nuisance. This civil judgment shall be for the purpose of compensating the City for its costs from pursuing the remedies under this Article.

## SECTION VI. SUPPLEMENTARY REMEDIES:

In any action in which probable cause for the existence of a public nuisance is established, in the event that the defendants, or any one of them, fails, neglects or refuses to comply with the court's temporary restraining orders, receiverships, closures, destruction orders, and/or other orders, the City may petition the Court to, in addition to or in the alternative to the remedy of contempt, permit the City to enter upon the real property, vehicle or other personal property and abate the nuisance, take steps to prevent public nuisances from occurring, and/or perform other acts required of the defendants in the Court's temporary restraining orders and/or other orders.

## SECTION VII. LIEN FOR JUDGMENTS.

In addition to the remedies provided in this Article, the City shall have a lien against the real property, vehicles and other personal property on or in which any public nuisance occurred or which was used to commit, conduct, promote, facilitate, or aid in the commission of any public nuisance for the total of all judgments imposed for costs and attorneys' fees. The City shall record a Notice of this lien with the Lea County Clerk.

## SECTION VIII. STIPULATED ALTERNATIVE REMEDIES.

A. Voluntary Stipulation: The City and any defendants to an action under this Article may voluntarily stipulate to temporary restraining orders, seizures, closures, receiverships, forfeitures, destruction, judgments, liens, and other remedies, temporary or permanent, that are different or altered from the remedies provided in this Article, including, but not limited to, the following:

1. Shorter or less stringent temporary restraining orders, closures and receiverships.
2. Receiverships on other terms, including but not limited to terms providing for the payment of secured indebtedness on the subject property, removal or substitution of the receiver, and other terms.
3. Non destruction of buildings, other structures, vehicles and other personal property.
4. Release of seized real property to the party currently entitled to possession, or to an agent, manager, or receiver appointed

under the stipulation, after the public nuisance has been fully abated, steps have been taken to prevent public nuisances from recurring, sufficient action has been taken to deter public nuisances, and the public interest is protected, or a suitable plan to accomplish these goals has been agreed to.

5. Reduction or waiver of civil judgments and liens.
6. Other reasonable stipulations designed to abate the public nuisance, prevent public nuisances from recurring, deter public nuisance activity, and protect the public interest.

B. Court Order: Any stipulations for alternative remedies shall be made by an order of the Court.

#### SECTION IX. OTHER SEIZURES, CLOSURES, FORFEITURES AND CONFISCATIONS.

Nothing in this Article shall be construed to limit or forbid the seizure, confiscation, closure, destruction or forfeiture of property now or hereafter required, authorized or permitted by any other provision of law. Nothing in this ordinance shall be construed as requiring that evidence and property seized, confiscated, closed, forfeited or destroyed under other provisions of law be subjected to the remedies and procedures provided in this ordinance.

PASSED, ADOPTED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_,  
2008.

\_\_\_\_\_  
GARY DON REAGAN, Mayor

ATTEST:

\_\_\_\_\_  
JAN FLETCHER, City Clerk