

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2011-1

3 INTRODUCED BY:

4 Councilor Dominguez

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10 AN ORDINANCE

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

16
17 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

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

20 10-9.1 Short Title; Applicability.

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

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

1 **10-9.2 Intent.**

2 A. The abatement of public nuisances for the protection of public health, safety, and
3 welfare is a matter of local concern. The purpose of this ~~[section]~~ Article is not to punish, but to
4 abate public nuisances. The remedies provided in this ~~[section]~~ Article are directed at the property
5 involved without regard to ownership, title or right of possession and the culpability or innocence
6 of those who hold these rights. The remedial actions provided in this ~~[section]~~ Article are
7 intended to be civil in nature.

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

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

15 **10-9.3 Definitions.**

16 For the purposes of this ~~[section]~~ Article, the following definitions shall apply unless the
17 context clearly indicates or requires a different meaning.

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

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

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

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

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

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

5 *Loud or unruly gathering* means a party or gathering of two or more persons at or on a
6 residence or other private property upon which loud or unruly conduct occurs. Loud or unruly
7 conduct includes, without limitation the following as further defined in city code or state law:

8 A. Excessive noise;

9 B. Obstruction of public streets or crowds that have spilled into public streets;

10 C. Public drunkenness or unlawful public consumption of alcohol or alcoholic
11 beverages;

12 D. Service to or consumption of alcohol or alcoholic beverages by any underage
13 person, except as permitted by state law;

14 E. Assaults, batteries, fights, domestic violence, disorderly conduct, or other
15 disturbances of the peace;

16 F. Vandalism;

17 G. Litter; and

18 H. Any other conduct which constitutes a threat to public health, safety, quiet
19 enjoyment of residential property or general welfare, including that conduct defined under public
20 nuisance herein.

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

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

1 kind.

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

4 *Public nuisance or nuisance* means:

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

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

12 For purposes of this ~~[section]~~ Article, the illegal activity shall have the same definition as that
13 contained in the section of the New Mexico Statutes Annotated (NMSA), as amended, or
14 Chapters XII or XX SFCC 1987, as amended, listed after the illegal activity:

15 (1) Prostitution, Section 30-9-2 NMSA; patronizing prostitutes, Section 30-
16 9-3 NMSA, promoting prostitution, Section 30-9-4 NMSA; or accepting earnings of a
17 prostitute, Section 30-9-4.1 NMSA;

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

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

20 (4) Trafficking in controlled substances, Section 30-31-20 NMSA;
21 distributing controlled substances to a minor, Section 30-31-21 NMSA; distribution of a
22 controlled substance, Section 30-31-22 NMSA; possession of a controlled substance,
23 Section 30-31-23 NMSA; distributing a counterfeit controlled substance, Section 30-31-
24 22B NMSA; distributing, manufacture, or possession of a imitation controlled substance,
25 Section 30-31A-4 NMSA; sale of an imitation controlled substance to a minor, Section

1 30-31A-5 NMSA;

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

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

7 ~~[(7)]~~ ~~Two (2) or more offenses within any one hundred eighty (180) day~~
8 ~~period of disorderly conduct, Section 30-20-1 NMSA and Section 20-2 SFCC 1987;]~~

9 ~~[(8)]~~(7) Unlawful carrying of a deadly weapon, Section 30-7-2 NMSA and
10 Section 20-19 SFCC 1987; unlawful possession of a handgun, Section 30-7-2.2 NMSA;
11 negligent use of a weapon, Section 30-7-4 NMSA; unlawful possession of a switchblade,
12 Section 30-7-8 NMSA; receipt, transportation or possession by a felon of a firearm or
13 destructive device;

14 ~~[(9)]~~(8) Dangerous use of explosives, Section 30-7-5 NMSA; negligent use of
15 explosives, Section 30-7-6 NMSA; unlawful sale, possession or transportation of
16 explosives, Section 30-7-7 NMSA; possession of explosives, Section 30-7-19 NMSA;
17 possession of explosive device or incendiary device, Section 30-7-19.1 NMSA;

18 ~~[(10)]~~(9) Shooting at a dwelling or occupied building or shooting at or from a
19 motor vehicle, Section 30-3-8 NMSA;

20 ~~[(11)]~~(10) ~~[Two (2) or more offenses within any one hundred eighty (180) day~~
21 ~~period of]~~ Selling, serving, giving away, disposing of, exchanging, delivering, procuring,
22 possessing or permitting the sale of alcoholic beverages to, for or by any person under
23 lawful age or to an intoxicated person, Sections 60-7A-16 and 60-7B-1 NMSA; using
24 property to provide, offer or permit the consumption of intoxicating liquors by [three (3)
25 or more] persons [who are] under the age of twenty-one (21) without [their] a parent's or

1 guardian's knowledge or consent or the order of a practicing physician, or as part of a
2 religious ceremony, or failing to use reasonable control and ordinary care to keep persons
3 under the age of twenty-one (21) from consuming intoxicating liquors on one's property.

4 ~~[(12)]~~(11) The sale of alcoholic beverages at any place other than a valid (not
5 suspended or revoked) licensed premises, Section 60-7A-4.1 NMSA; or the unlawful
6 manufacture of alcoholic beverages, Section 60-7A-7 NMSA; or

7 ~~[(13)]~~(12) Dog fighting, Section 30-18-9 NMSA; or

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

9 ~~[C.]~~D. A nuisance as defined or described in any other section of the city code.

10 ~~[D.]~~E. A nuisance consists of knowingly creating, performing or maintaining anything
11 affecting any number of citizens without lawful authority which is either:

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

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

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

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

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

25 A. Salaries and benefits of law enforcement, fire or other emergency response

1 personnel for the amount of time spent responding to, remaining at, or otherwise dealing with
2 loud or unruly gatherings, and the administrative costs attributable to such response(s);

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

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

9 Responsible person means a person or persons with a right of possession in the residence
10 or other private property on which a public nuisance is located, including, without limitation:

11 A. An owner of the residence or other private property;

12 B. A tenant or lessee of the residence or other private property;

13 C. The landlord of another person responsible for the gathering;

14 D. The person(s) in charge of the residence or other private property; and

15 E. The person(s) who organizes, supervises, officiates, conducts or controls the
16 gathering or any other person(s) accepting responsibility for such a gathering.

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

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

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

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

1 **10-9.4 [NEW MATERIAL.] Responsibility.**

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

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

9 C. If a responsible person for the nuisance is a juvenile, then the parents or
10 guardians of that juvenile and the juvenile will be jointly and severally liable for the response
11 costs incurred pursuant to this Ordinance.

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

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

17 **10-9.5 [NEW MATERIAL] Warning Issued.**

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

- 21 (1) The official has determined that a nuisance exists; and
22 (2) Responsible person(s) will be charged for any response costs required for
23 subsequent responses to the scene for a nuisance within a twelve-month period. Only one
24 warning will be given to a responsible person(s) pursuant to this Section before the city
25 of Santa Fe assesses response costs pursuant to Section 10-9.6 SFCC 1987. If a

1 responsible person cannot be identified at the scene, the official may issue a warning to
2 one or more persons identified in Section 10-9.4 SFCC 1987 or subsequently return to the
3 residence or other private property and issue the warning to a then-present responsible
4 person. Warnings given to responsible persons who do not reside at the residence or other
5 private property in question shall be delivered by certified mail.

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

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

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

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

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

19 **10-9.7 [NEW MATERIAL] Billing and Collection.**

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

25 (1) The name of the person(s) being held liable for the payment of such

1 costs;

2 (2) The address of the residence or other private property where the nuisance
3 occurred;

4 (3) The date and time of the response;

5 (4) The law enforcement, fire or emergency service provider who responded;

6 (5) The date and time of any previous warning given pursuant to Section 10-
7 9.5 SFCC 1987 and previous responses to nuisances at the residence or other private
8 property in question within the previous twelve months; and

9 (6) The recovery cost assessed as set forth in the cost recovery schedule.

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

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

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

15 **10-9.8 [NEW MATERIAL] Reservation of Legal Options.**

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

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

23 **10-9.9 [NEW MATERIAL] Appeals.**

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

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

3 ~~[10-9.4]~~ **10-9.10** **Procedures in General.**

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

10 B. All actions under this ~~[section]~~ Article are civil and remedial in nature.

11 C. ~~[Actions under this section shall be filed by]~~ The city attorney for the city of
12 Santa Fe may file a civil action to abate any nuisance in the District Court for the First Judicial
13 District. Investigation and assistance to the city attorney shall be by persons designated by the
14 city manager. A private citizen, in the name of the city may also bring an action under this
15 ~~[section]~~ Article.

16 D. Actions under this ~~[section]~~ Article may affect the use, possession, enjoyment,
17 and title to real property. Accordingly, the city may file and record a notice of lis pendens against
18 the real property involved.

19 E. The defendants to an action under this ~~[section]~~ Article and the persons liable for
20 the remedies in this ~~[section]~~ Article may include the property itself and any persons owning or
21 claiming any legal or equitable interest or right of possession in the property.

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

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

1 ~~[10-9.5]~~ 10-9.11 **Supplementary Remedies for Public Nuisances.**

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

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

8 ~~[10-9.6]~~ 10-9.12 **Severability.**

9 The requirements and provisions of this ~~[section]~~ Article and their parts, subparts and
10 clauses are severable. In the event that any requirement, provision, part, subpart or clause of this
11 ~~[section]~~ Article, or the application thereof to any person or circumstance, is held by a court of
12 competent jurisdiction to be invalid or unenforceable, it is the intent of the governing body that
13 the remainder of the section be enforced to the maximum extent possible consistent with the
14 governing body's purpose of abating public nuisances.

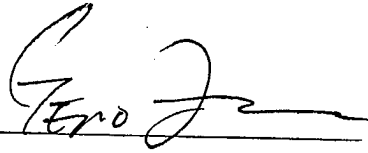
15 **Section 13. Section 10-9.7 SFCC 1987 (being Ord. No. 2001-8, §4) is amended to**
16 **read:**

17 ~~[10-9.7]~~ 10-9.13 **Right of Entry of Inspection Officer for Examination of**
18 **Premises.**

19 The inspection officer may enter, at all reasonable times, if the inspection officer has the
20 occupant's or custodian's consent, any house or premises within the city to ascertain the existence
21 of any nuisance. If the occupant's or custodian's consent is refused or is otherwise unobtainable,
22 an inspection order may be sought or an emergency inspectorial search conducted pursuant to the
23 procedures set forth in Sections 24-1-16 through 24-1-19 NMSA 1978 of the Public Health Act.
24 The inspection officer may investigate the conditions found and make reports provided, that such
25 entering and investigation are for the sole purpose of ascertaining the conditions entrusted to their

1 supervision; provided further that their reports are limited to matters pertaining to their duties.

2 APPROVED AS TO FORM:

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5 GENO ZAMORA, CITY ATTORNEY

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Jp/ca/jpmb/2010 bills/nuisance revisions