

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

ORDINANCE NO. 2023-_____

**AN ORDINANCE
REPEALING AND REPLACING ORDINANCE NO. 1989-2 AND
PARTIALLY REPEALING AND REPLACING ORDINANCE NO. 2009-
011 TO UPDATE AND DEFINE PROPERTY NUISANCE ABATEMENT
AND PROVIDE FOR A CLEAN AND LIEN ENFORCEMENT PROCESS**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY:**

SECTION 1. SHORT TITLE.

This Ordinance may be cited as the “Property Nuisance Abatement Ordinance.”

SECTION 2. PURPOSE.

A. When the failure of an individual in our community to take care of their property interferes with the use and enjoyment of neighboring property owners, Santa Fe County (County) has the power and the ability to remedy the problems caused by nuisance or problem properties.

B. It is the policy of the County to encourage properties be maintained in such a manner so as not to become nuisance properties that interfere with the enjoyment of owners and occupants of neighboring properties. It is further the policy of the County to attempt to secure the cooperation of the owner of a nuisance property to remedy the problems caused or created by such property before resorting to legal remedies whenever possible.

C. This Ordinance provides a framework and the necessary means to enforce the County’s statutory authority to abate, correct, remove and remedy nuisances in the County to protect the public health, welfare and safety, and to recover the costs of abatement, removal and remediation from those responsible for creating or failing to correct and abate the conditions which constitute such nuisances.

SECTION 3. NUISANCE DEFINED AND PROHIBITED.

A. All parcels of real property shall remain free of conditions constituting a nuisance as defined in this Ordinance, State statute, County Ordinances and common law.

B. Unless the conditions of a property appearing to be a nuisance occur as part of a permitted use of a property under the Sustainable Land Use Code (SLDC), and only to the extent that such use is in compliance with the requirements of all County ordinances and the development permit for the property, each of the following conditions existing on any parcel of real property within the County shall be deemed and declared to constitute a public nuisance and is prohibited:

(1) General Nuisances. The accumulation, collection, dumping, or stockpiling of any garbage, trash, litter, debris, rubbish, tires, appliances, junk, or other material.

(2) Motor Vehicles and Mechanical Equipment. The presence of abandoned or inoperative mechanical equipment, construction equipment, motor vehicles, mobile homes, or other commercial or recreational vehicles or equipment; or the parking, keeping or storing of any inoperative or unlicensed motor vehicle or of a vehicle which is in a state of major disassembly, disrepair, stripping or dismantling.

(3) Excessive Vegetation or Invasive or Nuisance Plants and Weeds. Excessive vegetation or invasive or nuisance plants or weeds that constitute a clear interference with the use and enjoyment of other neighboring properties. Such nuisances may be any natural vegetation, or any noxious plants or weeds recognized as such by the United States or New Mexico Department of Agriculture.

(4) Open Storage. The presence of garbage, trash, litter, debris, rubbish or junk which has fallen or spilled out of storage or collection containers meant for the same, or the failure to visually screen a collection area for outdoor garbage or trash storage by a solid wall or fencing to the extent required by County ordinance.

(5) Unclean Fill Material. The dumping or stockpiling of unclean fill material is prohibited. "Unclean fill" material includes contaminated soil, rock, and concrete, wood, plastic, insulation, metal, wire, broken/damaged piping, and general trash. Unclean fill material creates a public nuisance and potential safety hazard, and can adversely impact the environment. Clean fill material may be dumped or stockpiled as part of an approved use under the SLDC or as part of a permitted project. "Clean fill" includes broken concrete, brick, rock, stone, glass, reclaimed asphalt pavement, or soil that is uncontaminated, meaning the fill has not been mixed with any waste other than the foregoing and has not been subjected to any known spill or release of chemical contaminants, including a petroleum product, nor treated to remediate such contamination. Reinforcement materials which are an integral part, such as rebar, may be included as clean fill. Clean fill must be free of other solid waste, to include land clearing debris, construction and demolition debris, municipal solid waste, radioactive waste, hazardous waste or special waste.

(6) Interference with a Watercourse or Wetland. The placement or depositing of any materials in a watercourse or wetland, including but is not limited to, dirt, gravel, rocks, construction material, garbage, refuse, wood, tires or concrete, except to the extent that such

placement or depositing has been duly permitted by a federal, State, or local government with authority.

(7) Insect and Rodent Infestation or Harborage. The infestation or harborage of insects or rodents constitutes a nuisance. Infestation occurs when the presence of any insects or rodents is of such kind or in such numbers as to create a potential health hazard. Harborage is any condition which provides shelter or protection for insects and rodent which favors their multiplication and continued existence in, under, or outside of a building or structure, such as the accumulation of water, refuse, animal wastes, garbage, or trash that provides shelter or protection for insects or rodents.

(8) Criminal Activity. Any parcel of real property, commercial or residential, any personal property, or any vehicle on or in which repeated violations of the New Mexico criminal statutes has occurred, or that is the subject of or that has been involved with repeated calls for service to any law enforcement agency(ies) for violations of the criminal statutes, including 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.

(9) Toxic and Hazardous Materials. Any chemical and/or biological material that is stored, used, or disposed of in such quantity or manner that is, or has the potential to create, a health hazard.

(10) Groundwater Pollution. Addition of any chemical and/or biological substance that would cause groundwater to be unpalatable or unfit for human consumption. These substances include but are not limited to the chemical and/or biological substances listed in New Mexico law.

(11) Private Water Supply. Any private well that is constructed, abandoned or used and/or any pump installed in non-compliance with New Mexico law.

(12) Holes and Openings. Any hole or opening caused by an improperly abandoned cistern, septic tank, dug well, etc.; or any improperly abandoned, barricaded or covered up excavation.

(13) Common Law. Any nuisance as defined by common law.

SECTION 4. SUBSTANDARD BUILDING CONDITIONS WHICH CONSTITUTE NUISANCE.

A. Any building or portion thereof, including any dwelling unit, guest room or suite of rooms, and the real property on which the same is located, in which there exists any of the following listed conditions to an extent and degree that endangers the life, limb, health, property, safety or welfare of the public or the occupants thereof, shall be deemed and declared to constitute a nuisance under this Ordinance:

- (1) Lack of, or not properly operative water closet, lavatory, bathtub or shower in a dwelling unit.
- (2) Lack of, or not properly operative water closets, lavatories and bathtubs or showers in a motel.

- (3) Lack of, or not properly operative kitchen sink.
- (4) Lack of hot and cold running water to plumbing fixtures in a motel.
- (5) Lack of hot and cold running water to plumbing fixtures in a dwelling unit.
- (6) Lack of adequate heating facilities.
- (7) Lack of, or improper operation of required ventilating equipment.
- (8) Lack of minimum amounts of natural light and ventilation required by this Ordinance.
- (9) Room and space dimensions less than required by this Ordinance.
- (10) Lack of required electrical lighting.
- (11) Dampness of habitable rooms because of faulty weather protection.
- (12) General dilapidation or inadequate maintenance.
- (13) Lack of connection to a required, adequate and functioning sewage disposal system.
- (14) Structural hazards shall include, but are not limited, to the following:
 - a. Deteriorated or inadequate foundations.
 - b. Defective or deteriorated flooring or floor supports.
 - c. Flooring or floor supports of insufficient size to carry imposed loads with safety.
 - d. Members of walls, partitions or other vertical supports that spilt, lean, list or buckle.
 - e. Members of walls, partitions or other vertical supports that are of insufficient size to carry imposed loads with safety.
 - f. Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split or buckle.
 - g. Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety.
 - h. Fireplaces or chimneys which list, bulge or settle.
 - i. Fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety.
 - j. Inside or outside stairs, porches, and appurtenance thereto which are incapable of supporting the load that normal use may cause to be placed thereon and unsafe to use.
 - k. Interior walls and ceilings with holes or large cracks, loose plaster and other structural materials, the collapse of which might constitute an accident hazard.

B. In addition to the conditions deemed to constitute a nuisance in other sections of this Ordinance, any building, including a structure, shall be deemed and declared to constitute a nuisance under this Ordinance if any of the following conditions exist:

- (1) The building has broken windows or doors constituting hazardous conditions and inviting trespassers or malicious mischief;

(2) The building is boarded up, partially destroyed, not properly secured or partially constructed or incomplete after a building permit authorizing its construction has expired;

(3) The building is not maintained to the extent that it is dilapidated or decrepit so as to cause substantial diminution in the enjoyment and use of adjacent or nearby properties;

(4) The building is uninhabited and in an unsecured state, so as to invite trespassers, criminals or others unauthorized to enter for the purpose of committing a nuisance or unlawful act, or the building constitutes an attractive nuisance for children; or

(5) The building has been vacant for a period of at least six months, and utility connections which enable the provision of electricity, heat, water and wastewater removal have been disconnected for at least six months, and one or more of the conditions listed in paragraphs (A) through (B) of this section also exist.

SECTION 5. RESOLVING NUISANCES.

A. The Board of County Commissioners shall designate the employees of the County authorized enforce this Ordinance through the issuance of citations and otherwise, each of which are referred to herein collectively and individually as a Code Enforcement Officer or CEO. The designated CEO, in conjunction with the County Attorney's Office, shall administer this Ordinance. In addition, the County may contract for services necessary to determine whether a property should be deemed a nuisance as defined herein.

B. Enforcement authority shall be exercised in a manner of cooperation and collaboration with all County citizens to achieve compliance voluntarily if possible. The CEO shall accept and process complaints of nuisance violations under this Ordinance and shall investigate such allegations in cooperation with all County offices with enforcement authority.

C. Each County health and safety ordinance may be enforced through the provisions of such ordinance or through this Ordinance, in the discretion of the CEO and the County Manager. To the extent that appropriate resources are available, the CEO shall coordinate with appropriate County staff and investigate complaints received from citizens of nuisances within the County and may conduct periodic inspections of buildings, structures, and the use of land to confirm compliance with this Ordinance.

D. Privacy Rights. Nothing in this Ordinance shall affect the rights of citizens to privacy in and on their property. Entry on property, except in emergency situations, shall be preceded with consent of the owner or an administrative or other warrant, or as otherwise regulated by a licensing or permitting ordinance.

E. Voluntary Compliance in Non-Emergency Situations. In cases not involving imminent threat to the public health, safety and welfare, the County shall first attempt to secure the cooperation of the individuals who own or occupy the problem property to correct the

conditions causing the nuisance within a reasonable period of time as determined by the County. Compliance is the goal, before having to resort to enforcement procedures. Nuisances that are an imminent threat to public health, safety and welfare may be dealt with irrespective of whether the cooperation of the owner or occupant of the nuisance property can first be secured.

SECTION 6. INITIATION OF ENFORCEMENT.

A. If voluntary compliance is not achieved within a reasonable period of time, or there is an imminent threat to the public health, safety and welfare, the nuisance may be remedied with any of the legal methods allowed under New Mexico law and County ordinance. The CEO shall have the discretion to address the nuisance in the legal manner best suited to the circumstances of the nuisance.

(1) Complaints of nuisance violations under this Ordinance shall be made on forms prescribed by the County Manager or designee; provided, however, that no complaint is necessary for the County to investigate a nuisance observed by a CEO or as to which the CEO possesses credible evidence. When a nuisance is suspected, the CEO shall investigate, and if the apparent nuisance is substantiated, determine whether abatement can be accomplished over time or if there is an imminent threat to the public health, safety and welfare requiring immediate action.

(2) The Sheriff's Office may be asked to assist with the investigation, remedying, or prosecution of any nuisance, and to accompany the CEO to safely enter private or public property to secure the property in a manner to protect the public.

(3) Imminent threats to public health, safety, and welfare. When the CEO determines that a nuisance presents an imminent threat to public health, safety and welfare, cooperation of the owner may be sought through a notice but is not necessary to address the nuisance. The CEO shall take all steps necessary to protect the public health, safety and welfare within County legal authority as described in Section 7 below.

(4) Nuisance conditions that present no imminent threat to public health, safety and welfare. The County shall try to address nuisances that are not an imminent threat to public health, safety and welfare with the cooperation of the owner or occupant of the nuisance property. All enforcement mechanisms described herein may be utilized if the owner or occupant fails to remedy the nuisance within a reasonable period of time after notice as described in Section 8 below.

SECTION 7. EMERGENCY PROCESS FOR IMMINENT THREAT TO PUBLIC HEALTH, SAFETY, AND WELFARE.

A. The County has the authority to abate nuisances presenting an imminent threat to the public health, safety and welfare under the following procedures.

(1) The CEO shall first determine that a nuisance exists and second that public health and safety require the removal of the nuisance immediately pursuant to the County's power to protect the health and safety of its citizens. These findings shall be maintained in writing in the case file.

(2) The CEO, in consultation with the County Attorney, shall determine if an administrative warrant or judicial order authorizing the abatement must first be obtained based on the individualized facts and circumstances.

(3) Notice of the nuisance, the immediate necessity of the abatement of the nuisance, and the right to a hearing under Section 10 below shall be posted on the property whenever practicable. If the notice cannot be posted because of the nature of the imminent threat, it shall be posted and hand delivered or mailed by certified mail, return receipt requested to the property owner occupant the next business day.

(4) After the emergency abatement of the nuisance, the CEO shall assess the costs of abatement after notice to the owner or occupant and a hearing before the Nuisance Hearing Officer as provided in Section 10 below. If further abatement is needed, the CEO may proceed to begin the clean and lien proceedings before the Nuisance Hearing Officer pursuant to Sections 10 and 11 below.

SECTION 8. COMPLIANCE PROCESS.

A. When the nuisance does not present an imminent threat to the public health, safety and welfare, the following process may be utilized.

(1) A written notice to correct the nuisance shall be sent if:

- a. The violation is a first violation or no comparable violation has occurred in four years; and
- b. The conditions creating a nuisance can be corrected, abated or remediated within a reasonable period of time; and,

(2) The written notice to correct shall be sent by hand delivery or certified mail, return receipt requested to the owner and, if different than the owner, occupant of the property, and shall be posted in a conspicuous location on the property. The notice shall contain:

- a. the location of the premises, by street address or otherwise, where the nuisance was observed;
- b. each violation and the particular ordinance, rule, or regulation violated;
- c. direction that the owner or occupant abate the nuisance within a reasonable time and that the owner or occupant provide evidence of the abatement within ten (10) calendar days from the date of the notice;
- d. statement that the owner or occupant may dispute the notice by timely submitting a written request for a hearing, which must be actually received by the applicable deadline;

- e. statement that failure to request a hearing in a timely manner will result in a conclusive presumption that a nuisance exists pursuant to this Ordinance;
- f. statement that the County shall collect costs of nuisance abatement from the owner or occupant, and may order a lien upon the real property of the owner or occupant.

(3) In the event the owner of the property cannot be located, such notice may be served by posting a copy of the written notice upon the property and publication according to the service by publication rule (Rule 1-004(K)) of the New Mexico Rules Annotated.

(4) The CEO may attempt to resolve the nuisance conditions through the voluntary compliance of the owner of the property by executing an action plan with the owner as provided under Section 5 of this Ordinance. If the nature of the violation is such that it cannot be cured within a reasonable period, an action plan may be entered into between the owner or occupant and the CEO, provided the owner or occupant responds within the required time period. The CEO shall periodically follow up on any action plan until the violations have been corrected. Provided that the owner or occupant is actively pursuing the correction of the violation, the CEO, with the approval of the County Manager, may extend the action plan.

(5) If the conditions in paragraph (1) above are not met, or the owner or occupant fails to correct the violations within a reasonable time, the CEO shall pursue the appropriate process under this Ordinance.

SECTION 9. ENFORCEMENT.

A. All of the remedies provided by law are available to solve and abate nuisances. The CEO, in consultation with the County Attorney, shall choose the most economically and legally appropriate process.

- B. When compliance cannot be obtained voluntarily, the CEO's options include:
- (1) The administrative enforcement and hearing process of Section 10 below;
 - (2) Criminal citations charging the violation in a court of competent jurisdiction of the County pursuant to statutory authority in NMSA 1978, § 4-37-3;
 - (3) A civil lawsuit to abate the nuisance as authorized by law;
 - (4) Administrative enforcement through a clean and lien resolution pursuant to Sections 10 and 11 below; and
 - (5) All other remedies as provided by ordinance, state statute and common law.

SECTION 10. ADMINISTRATIVE ENFORCEMENT.

A. When the nuisance presents no imminent threat of harm to the public, and an owner or occupant has failed to comply with a notice of violation letter, the CEO may choose to solve the nuisance through the administrative enforcement process established herein.

B. The Board of County Commissioners shall from time to time appoint one or more Nuisance Hearing Officer(s) to discharge the duties set forth in this Ordinance. The Board of County Commissioners hereby delegates to the Nuisance Hearing Officer authority to hold evidentiary hearings. The Nuisance Hearing Officer shall make recommendations to the Board of County Commissioners in the administrative enforcement process as provided herein.

C. Administrative enforcement shall follow the following process.

(1) The CEO shall issue a written order to correct and remediate a nuisance within a reasonable period of time based upon the violation.

(2) If the owner or occupant fails to comply with the order, the CEO shall request a hearing before the Nuisance Hearing Officer and give legally sufficient notice of the hearing to the owner and or the occupant. The Nuisance Hearing Officer shall promulgate rules of procedure for their hearings, which shall be approved by Board of County Commissioners.

(3) The Nuisance Hearing Officer shall hear evidence from the CEO describing the condition of the property and establishing the existence of a nuisance. The owner or occupant may present evidence refuting the existence of a nuisance and argue any legal issue that is a defense to this Ordinance.

(4) Within five (5) business days, the Hearing Officer shall issue a decision finding the existence of a nuisance and attaching a draft resolution for a clean and lien of the property as provided in Section 11 below or finding that the conditions do not constitute a nuisance. Any decision of the Nuisance Hearing Officer shall be supported by findings of fact and conclusions of law.

(5) If a nuisance is proven, the Nuisance Hearing Officer shall prepare a resolution for consideration and potential action by the Board of County Commissioners ordering the cleaning of the property, the placement of a lien, and an allowance for the foreclosure of the lien and sale of the property.

SECTION 11. DECLARATION BY THE BOARD OF COUNTY COMMISSIONERS OF PUBLIC NUISANCE AND CONDEMNATION; APPEAL TO DISTRICT COURT; LIEN FOR COSTS OF CLEAN-UP.

A. Under NMSA 1978, §§ 3-18-5 and 4-37-1, the County enacts a clean and lien enforcement process. Based upon a proposed resolution from the Hearing Officer, the Board of County Commissioners may find that a building, structure or property is a nuisance. The Board of County Commissioners shall either vote in favor of the proposed resolution, deny the proposed Resolution, or remand the matter to the Hearing Officer if further hearing is required.

B. The action by the Board shall be on the record from the Hearing Officer with only argument from any interested party. If the Board of County Commissioners adopts the resolution and finds a building, structure or property to be a public nuisance which must be abated by removal or other corrective action in accordance with this Ordinance, the following actions shall be taken:

(1) A copy of the resolution shall be served on the owner, occupant or agent in charge of the building, structure, or property which is the subject of the resolution. If the owner, as shown by the real estate records of the County Clerk, or the occupant or agent in charge of the building, structure, or property cannot be served within the County, a copy of the resolution shall be posted on said building, structure or property and a summary of the resolution shall be published once each week for three consecutive weeks in a local newspaper of general circulation in the County.

(2) Within ten (10) calendar days of the receipt of a copy of the resolution or of the posting and final publication of the resolution, the owner, occupant or agent in charge of the building, structure or property shall commence the removal the building, structure, ruin, rubbish, wreckage, debris or other nuisance, take such other corrective action as required by the resolution, or file a written objection with the County Clerk requesting a *de novo* hearing before the Board of County Commissioners.

(3) If a written objection is filed as required in this section, the Board of County Commissioners shall:

- a. Fix a date for a hearing on its allegations and the objection;
- b. Consider all evidence for and against the nuisance resolution at the hearing; and
- c. Determine if the nuisance resolution should be confirmed, modified, or rescinded.

C. Any person aggrieved by the final decision of the Board of County Commissioners after the *de novo* hearing in the previous paragraph may appeal to the First Judicial District Court pursuant to Rule 1-074 NMRA.

D. The County may abate the nuisance as provided in the resolution at the cost and expense of the owner, if the owner, occupant or agent in charge of the building, structure or premise fails to:

(1) Within ten (10) calendar days of being served a copy of the resolution or of the posting and publishing of the resolution, commence abating the nuisance; or

(2) Within five (5) calendar days after the determination by the Board of County Commissioners that the resolution shall be enforced, commence abating the nuisance; or

(3) If the determination is appealed, within thirty (30) calendar days after the district court enters judgment sustaining the determination of the Board of County Commissioners, commence abating the nuisance, or

(4) Fails to timely complete the abatement as required by the resolution.

The reasonable cost of the abatement shall constitute a lien against the lot or parcel of land on which the nuisance existed. The lien shall be foreclosed in the manner provided in NMSA 1978, §§ 3-36-1 through 3-36-6.

E. The County may pay for the costs of abating a nuisance which is the subject of a nuisance resolution under this section by granting to the person abating such nuisance the legal title to all salvageable materials in lieu of all other compensation. The Board of County Commissioners may allocate funds each fiscal year from which costs of administering this Ordinance, including, but not limited to, the costs of the Nuisance Hearing Officer, of professionals to inspect property and determine the existence of nuisance conditions, and of attorneys to prosecute actions in court, and the abatement of nuisances may be paid.

F. Any person or abating any nuisance which is the subject of a nuisance resolution under this section shall leave the property in a clean, level and safe condition, suitable for further occupancy or construction and with all excavations filled.

SECTION 12. CRIMINAL PENALTIES.

If the CEO determines that the appropriate enforcement mechanism is the criminal process, a criminal citation shall be filed in a court of competent jurisdiction. A person shall be guilty of a separate offense for each and every day or portion thereof during which any such violation continues. Upon conviction of any such violation, such person may be punished by fine of not more than \$300.00 or by imprisonment for not more than ninety (90) calendar days, or by both such fine and imprisonment and as otherwise allowed under NMSA 1978, § 4-37-3.

SECTION 13. REMEDIES NOT EXCLUSIVE.

Nothing herein shall preclude the County from instituting any appropriate action in law or equity to restrain, correct or abate any violations of this Ordinance, or to suspend, cancel, or revoke, in whole or in part, any permits, registrations, or licenses issued under the SLDC or any other County ordinance, or to pursue all available criminal or civil remedies available under the law. The County may file criminal, civil, injunctive and administrative actions simultaneously to stop any person who is violating this Ordinance from injuring the public health, safety and welfare.

SECTION 14. SEVERABILITY.

If any of the sections, subsections, sentences, clauses, or phrases of this Ordinance are for any reason found to be unconstitutional or invalid, the validity of the remaining portions of this Ordinance shall not thereby be affected, since it is the express intent of the Board of County Commissioners to pass each section, phrase, paragraph, and work separately.

SECTION 15. REPEAL.

A. Santa Fe County Ordinance No. 1989-002 is hereby repealed.

B. Santa Fe County Ordinance No. 2009-011 is partially repealed. Sections 9, 10, 11, 12 of Ordinance No. 2009-011 are hereby repealed; all remaining sections of Ordinance No. 2009-011 remain in full force and effect.

SECTION 16. EFFECTIVE DATE.

The effective date of this Ordinance shall be in 30 days after it is recorded with the County Clerk pursuant to NMSA 1978, § 4-37-9.

PASSED, APPROVED, and ADOPTED this ____ day of _____, 2023, by the Board of County Commissioners of Santa Fe County.

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: _____
Anna C. Hansen, Chair

ATTEST:

Katharine E. Clark
Santa Fe County Clerk

APPROVED AS TO FORM:

Jeff Young
Santa Fe County Attorney