

**ORDINANCE NO. 1309**

**AN ORDINANCE AMENDING CHAPTER 32 (NUISANCES), ARTICLE 1 (IN GENERAL), SECTIONS 32-1 THROUGH 32-32, ARTICLE II (ABANDONED VEHICLES), SECTIONS 32-33 THROUGH 32-49, ARTICLE III (RESERVED), SECTIONS 32-50 THROUGH 32-64, PROVIDING DEFINITIONS AND EXAMPLES; PROVIDING FOR ABATEMENT; AND SPECIFYING LEGAL PROCESS.**

**Sponsored by Mayor Ken Ladner and Councilor Jose Ray**

**WHEREAS**, Town ordinances provide for code enforcement to cite into municipal court those who perpetrate, maintain or commit nuisances; and

**WHEREAS**, Town ordinances also provide for elimination and abatement of nuisances; and

**WHEREAS**, nuisances have been and continue to be an ongoing problem for many municipalities including the Town and its inhabitants; and

**WHEREAS**, nuisances are detrimental to the health, safety and welfare of the Town's inhabitants; and

**WHEREAS**, the challenges presented to town personnel by nuisances require that the Town's nuisance ordinance be amended, in order to afford town personnel flexibility, clarity and specificity for the abatement, control and elimination of nuisances; and

**WHEREAS**, the amendment of the Town's nuisance ordinances is appropriate for the health, safety and general welfare of the Town and its inhabitants.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE**

**TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, that:**

1. Chapter 32 (Nuisances), Article I (In General), Sections 32-1 through 32-32 are deleted in their entirety and replaced with the following to now read:

**CHAPTER 32 – NUISANCES**

ARTICLE 1. – IN GENERAL

Sec. 32-1. – Public nuisance.

- (a) It is unlawful, and a violation of the town’s municipal code, for any person to cause, commit, maintain or allow the creation, maintenance or existence of a public nuisance.
- (b) A public nuisance means any person doing an unlawful act, failing to perform a duty, or performing, permitting, or maintaining any condition or thing to exist, and the act, omission, condition or thing either:
  - (1) Injures or endangers the comfort, welfare, repose, health or safety of others;
  - (2) Interferes with, obstructs, or tends to obstruct, or renders dangerous for passage any public or private street, sidewalk, right-of-way, stream, ditch or drainage;  
or
  - (3) Interferes with the exercise of public rights, or tends to fundamentally diminish or interfere with the enjoyment of life and property, or tends to depreciate the value of the property of others.
- (c) Upon conviction of a person by a court of competent jurisdiction for violating any provisions of this chapter, and for which a penalty is not otherwise specifically provided, shall subject said person to the penalties prescribed under the general penalty section 1-9.

Sec. 32-2. – Illustrative enumeration of nuisances.

- (a) The maintaining, producing, placing, depositing, leaving, or permitting to be or remain on any public or private property any of the following items, conditions or actions is declared to be and constitute a nuisance, provided that this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- (1) Noxious weeds or other rank vegetation which produce noxious odors;
- (2) Accumulations of rubbish, trash, refuse, filth, litter, junk, and other abandoned or discarded items or material, metals, lumber, plastic or other things;
- (3) Any condition which provides harborage for rats, mice or other rodents, snakes or other vermin;
- (4) Any building, structure or any accumulation of any material or item or items used as a building or structure, that is in such a dilapidated condition that it is unfit for human habitation, or is kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity where it is located, or presents a fire hazard in the vicinity where it is located;
- (5) Any condition that is attractive and dangerous to children, such as vacant, accessible buildings, excavations, abandoned machinery or appliances, dilapidated walls or fences or barbed wire fences, or wood, rock, gravel or sand piles or debris on vacant lots, and not adequately secured from the public;
- (6) All unnecessary noises or unauthorized noises and annoying vibrations, including animal noises;
- (7) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances, or other causes which give rise to the emission or generation of such odors and stenches;
- (8) The carcasses of animals or fowl not disposed of within a reasonable time;
- (9) The pollution of any public or private well or cistern, stream, spring, creek, lake, pond, ditch, canal, waterway, or declared or known groundwater, or other body

of water by introducing any object or substance causing it to be offensive or dangerous for human or animal consumption or use;

- (10) Any building or structure or other place or location where any activity in violation of local, state, or federal law is conducted, performed or maintained;
- (11) Any accumulation of stagnant water which is permitted or maintained on any piece of ground or property that produces noxious odor or constitutes a health hazard;
- (12) The permitting of aggressive and undesirable bee behavior as defined in Chapter 6 or permitting any other activity by bees that may result in harm to others;
- (13) Dense smoke, noxious fumes, gas, soot, or cinders in unreasonable quantities, or fails to dissipate within a reasonable amount of time;
- (14) An owner, custodian, or any person having possession of any animal and permitting or allowing the animal to: molest or harass pedestrians, passing vehicles or bicycle; attack, bite or display menacing behavior towards humans or other animals; trespass on schools, hospital grounds or public or private property; running at large; damage or deface public or private property; bark, whine, or howl excessively; emits or causes noxious or offensive odors; or, act in any manner that may annoy or injure humans.

Sec. 32-3 – Citation or complaint; notice to abate.

Whenever a nuisance is found to exist within the town or town's jurisdiction, a duly designated officer of the town may either:

- (a) Issue a summons, citation, and/or complaint to the offender, being the owner of record of the property on which the nuisance occurs, or the occupant or tenant of the

property where the nuisance is located, or person causing or maintaining the nuisance, or to each and every one, to appear before the municipal court for violation of this article; and/or

- (b) Issue to the owner of record of the property on which the nuisance occurs, or to the occupant or tenant of the property where the nuisance is located, or person causing or maintaining the nuisance, or to each and every one, a written notice to abate the nuisance, providing a time specified in the notice for abatement that is reasonable under the circumstances.
  - (1) The person receiving the notice to abate shall have ten (10) days from the issuance of the notice to file with the town clerk a written request for a hearing before the Town Council regarding any issue relating to the notice to abate the nuisance.
  - (2) Upon receiving a written request for hearing before the Town Council, the town clerk shall schedule a hearing at a certain date and time, schedule the hearing on the agenda of the Town Council, and provide written notice by regular first-class U.S. mail of the date, time and place of the hearing to the person who requested the hearing and to code enforcement.
  - (3) At the hearing, the Town Council shall determine, by a preponderance of the evidence, if the alleged nuisance exists, any time frame for abatement of the nuisance, require the offender to be responsible for the costs thereof, and any other issue concerning the alleged nuisance.
  - (4) Upon issuing a final decision in an abatement hearing, the town manager or designee shall prepare the written decision of the Town Council that includes an

order granting or denying relief and a statement of the factual and legal basis for the order, and file the written decision with the town clerk in the official public records of the Town. The town clerk shall then serve by regular first-class U.S. mail a document that includes a copy of the written decision and the requirements for filing an appeal of the final decision on all persons who were parties in the proceeding before the Town Council and every person who has filed a written request for notice of the final decision.

- (c) The performance of any abatement work or initiation of an abatement action by the town shall not relieve the offender from prosecution under this chapter pursuant to Section 32-3 (a) for violation of this chapter.

Sec. 32-4 – Contents of notice to abate; service of notice.

- (a) The notice to abate a nuisance issued under section 32-3 (b) shall contain the following:
  - (1) A description and location of the nuisance;
  - (2) The action needed to abate the nuisance;
  - (3) An order to abate the nuisance within a specified, reasonable time.
  - (4) A statement advising the person of the right to request a hearing before the Town Council in writing to be filed in the town clerk within ten (10) days from issuance of the notice to abate with said hearing to address any issue regarding the notice.
  - (5) A statement that if the nuisance is not abated as directed and no request for a hearing has been filed with the town clerk within ten (10) days from the

issuance of the notice to abate, the town may abate such nuisance and assess the cost thereof against the offender.

- (b) Notice to abate shall be personally served on the owner of record of the property, or occupant or tenant of the property where the nuisance is located, or person causing or maintaining the nuisance, or to each and every one; or if notice cannot be personally served it shall be served by certified mail/return receipt addressed to such person's last known address along with posting a copy of the notice on the building, structure or premise. In the event personal service cannot be made and the address is unknown or cannot be ascertained, a copy of the notice to abate shall be posted on the building, structure or premise and shall also be given by publication to be published once a week for two consecutive weeks in a newspaper of general circulation published within the town.

Sec. 32-5 – Failure to abate; abatement by town.

Upon service of notice to abate pursuant to this article, and the person ordered to abate the nuisance fails to do so within the time stated in the notice, and also fails to request a hearing as prescribed in the notice, then the duly designated officer of the town, or designee, may abate the nuisance at cost assessed to the person responsible to abate the nuisance. If any offender fails to abate the nuisance after hearing before and order to do so by the Town Council, and fails to appeal the decision of the Town Council to District Court as provided in this chapter, then the duly designated officer of the town, or designee, may abate the nuisance, at cost assessed to the offender.

Sec. 32-6 – Appeal to district court.

Final decision of the Town Council may be appealed by the offender to the District Court pursuant to NMSA 1978, § 39-3-1.1.

Sec. 32-7 – Town’s cost declared a lien.

Any and all costs incurred by the town to abate the nuisance, including reasonable attorney fees, shall constitute a lien against the property upon which such nuisance existed. The town manager, or designee, shall prepare the lien which shall include a statement of costs specifying the amount of expenses expended by the town, the date of the abatement, and any other information that may be required by NMSA 1978, § 3-36-1 et seq., or other law, and the lien shall be filed by the town manager or designee with the county clerk. Such lien shall be notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied.

Sec. 32-8 – Alternative methods of abatement; recovery and foreclosure.

Nothing in this chapter shall be construed to prohibit or restrict the town from seeking abatement by any other method prescribed by law, including, where a nuisance is found to exist, initiating a complaint in the name of the town to enjoin any and all persons from creating, maintaining or permitting the nuisance, and secure abatement of the nuisance at cost to the offender; or seeking recovery of expenses and interest by instituting a suit in the town’s name for recovery and foreclosure of lien as provided by law.

Sec. 32-9 – Separate process for emergency abatement.

If any nuisance necessitates the dispatch of police, fire, or any other emergency services or should any exigency create the existence of a nuisance deemed to be an immediate or exigent threat to public health, safety or welfare, the town manager may authorize through written findings within a reasonable practicable time those measures necessary and sufficient to abate



the emergency, until, if necessary, the procedures contained in this chapter can be safely followed.

Secs. 32-10—32-32. - Reserved.

2. Chapter 32 (Nuisances), Article II (Abandoned Vehicles), Sections 32-33 through 32-49 are deleted in their entirety and replaced with the following to now read:

## ARTICLE II. - NUISANCE VEHICLES

### Sec. 32-33. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandoned vehicle* means any motor vehicle that does not display a current license plate or valid police sticker as defined in NMSA 1978, § 66-3-14, or reasonably appears to have been discarded or unclaimed by its owner or operator.

*Dismantled vehicle* means any motor vehicle that has been disassembled to any degree which renders it legally inoperable.

*Inoperable vehicle* means any motor vehicle incapable of operation upon any street or highway in compliance with the laws of this jurisdiction.

*Nuisance vehicle* means any vehicle that is abandoned, dismantled, inoperable or wrecked and located on public or private property in violation of this chapter.

*Private property* means any real property within the town that is privately owned and that is not public property, as defined in this section.

*Public property* means any highway, street, alleyway, easement or right-of-way, which shall include the entire width between the boundary lines of every way publicly maintained for

the purposes of vehicular travel, and also means any other property or facility owned by a governmental entity.

*Vehicle* means any motor vehicle that is designed to be self-propelled and travel along the ground and includes but is not limited to automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, go-carts, golfcarts, recreational and all-terrain vehicles, and motor homes.

*Wrecked vehicle* means any motor vehicle that is disabled or in a state of ruin or dilapidation which renders it inoperable.

**Sec. 32-34. – Nuisance vehicles prohibited.**

- (a) The presence of an abandoned, wrecked, dismantled, or inoperative vehicle or parts thereof on public property or private property in violation of this article is declared to be a public nuisance and a violation of the municipal code, which may be abated in accordance with this article.
- (b) No person shall park, store, leave or permit the parking, storing, or leaving of any motor vehicle of any kind which is in an abandoned, wrecked, dismantled or inoperative condition (a nuisance vehicle), whether attended or not, upon any public property within the town for a period of time in excess of seventy-two (72) hours, or upon any private property for a period in excess of thirty (30) days.
- (c) This section shall not apply to:
  - (1) Any vehicle on private property in a building or within an area enclosed by a fence or wall and out of public view, or covered, or;

- (2) To any vehicle held in connection with a business enterprise, lawfully licensed by the town and properly operated in the appropriate business zone, pursuant to the zoning laws of the town.

Sec. 32-35. – Notice of nuisance vehicles on private property.

- (a) If the nuisance involves a vehicle on private property, the police department or code enforcement department shall serve notice of removal to the occupant of the private property, or if there is no occupant, to the owner or owner's agent, or if unable to locate the occupant, owner or agent of the property, then to the owner of the vehicle, at least ten (10) days before the time of compliance, which shall be set forth in the notice.
- (b) The notice shall be in writing and shall be served upon the occupant of the land where the nuisance exists, or if there is no such occupant, upon the owner of the property or his agent, or the owner of the vehicle.
- (c) It shall constitute sufficient notice when a copy of the notice of removal is personally served to the occupant or owner of the private property, or the agent, or to the owner of the vehicle, or either or all of them. If the notice cannot be personally served to any of the above, then it may be served by posting a copy of such in a conspicuous place upon the private property on which the vehicle is located, and mailing a duplicate copy of the notice by certified mail/return receipt to the property's occupant, owner or agent, or to the owner of the vehicle, at the person's last known address. If notice cannot be given pursuant to this section, notice shall be given by publication once in a newspaper of general circulation in the community.

- (d) The occupant of the private property on which the vehicle is located, or the owner or owner's agent, or the owner of the nuisance vehicle, either or all of them, shall be responsible for its removal.

Sec. 32-36. – Citations, Summons, or Complaint.

- (a) After notice to abate is served for a nuisance vehicle on private property and the offender fails to abate the nuisance vehicle within the time period prescribed by this article, then a duly designated officer of the town shall issue a summons, citation, and/or complaint to the offender, being the occupant or tenant of the property where the nuisance vehicle is located, or the owner of record of the property or his agent, or to either and all of them, to appear before the municipal court for violation of this article.

- (1) In addition to any penalties prescribed by the municipal code contained in general penalty section 1-9 upon conviction of the offender for violation of this section, the court may order the offender to abate the nuisance vehicle or cease the activity causing the nuisance upon terms set by the court, or if the offender fails or has failed to abate the nuisance vehicle, authorize the town to abate the nuisance vehicle at cost to the tenant, occupant, or owner of the property.

Sec. 32-37. – Notice of nuisance vehicles on public property; request for hearing.

- (a) If the nuisance vehicle is located on public property, notice shall be given to the owner of the vehicle or agent by placing the notice on the vehicle and mailing a copy, by certified mail/return receipt, to the owner(s) within twenty-four

(24) hours, notifying the offender of the existence of the nuisance and requesting its removal in the time specified in this section.

- (b) Notice shall be given to the owner or his agent at least ten (10) days before the time of compliance, which shall be set forth in the notice.
- (c) If notice cannot be given pursuant to this section, notice shall be given by posting a copy of the notice on the vehicle and publication of the notice once in a newspaper of general circulation in the community.
- (d) The owner or owner's agent is responsible for removing the vehicle at owner's cost.

Sec. 32-38. – Request for hearing for nuisance vehicle on public property; abatement.

- (a) For a nuisance involving a vehicle on public property, the person to whom a notice is directed or their agent may file a written request for hearing with the municipal court within seventy-two (72) hours after written notice has been provided according to this article, for the purpose of contesting the charges by the town or addressing any issue concerning the notice.
- (b) If the offender fails to request a hearing in the time prescribed by this section and fails to abate the nuisance vehicle, or if a request for a hearing is timely filed and a hearing conducted and the violation is affirmed by the municipal judge and the offender fails to remove the vehicle, then the town has the right to abate the nuisance and remove the vehicle at cost to the owner, and the vehicle may be disposed of according to law.
- (c) The performance of any abatement work or initiation of an abatement action by the town shall not relieve the offender from prosecution under this article

for violation of this chapter, and shall upon conviction subject the offender to any penalties prescribed by the municipal code contained in general penalty section 1-9.

Sec. 32-39. – Removal of vehicle from private or public property.

It shall be a violation of the town's code for any person to interfere with, hinder, or refuse to allow the town's designated person to remove a nuisance vehicle pursuant to this article. The cost of removal of the vehicle shall be levied upon the owner or occupant of the property for vehicles removed from private property and levied upon the owner of the vehicle for vehicles removed from public property.

Secs. 32-40—32-49. - Reserved.

3. Chapter 32 (Nuisances), Article III (Reserved), Sections 32-50 through 32-64 are deleted in their entirety and replaced with the following to now read:

**ARTICLE III. – GRAFFITI AND SPRAY PAINT.**

Sec 32-50 – Graffiti Vandalism.

- (a) The term graffiti means inscriptions, words, figures, patterns, markings, or any design that is marked, etched, scratched, drawn, painted, pasted or otherwise affixed or applied to or on any structure or surface.
- (b) The commission of graffiti vandalism is declared to be a public nuisance and a violation of the municipal code, and consists of any person intentionally defacing any real or personal property of with graffiti, to the extent that it was not authorized in advance by the owner thereof, or despite advance authorization, it constitutes a nuisance pursuant to this chapter.
- (c) A person may be charged with and convicted of the crime of graffiti vandalism as an accessory if the person procures, counsels, aids or abets in its commission, even

though not directly committing the crime and although the principal who directly committed such crime has not been prosecuted or convicted.

- (d) Whoever commits graffiti vandalism may be required as a condition of probation or a deferred or suspended sentence:
  - (1) To perform mandatory community service within a continuous period following conviction; and/or
  - (2) To clean up, repair or replace the defaced real or personal property; and/or
  - (3) To make restitution to the property owner for the cost of damages and restoration.
- (e) It shall be unlawful, and a violation of the municipal code, for the owner of any premises, house, structure, building, establishment, lot, yard, wall, or fence within the town, or the agent of such owner, or any person who occupies such premises, to permit graffiti to remain on the premises.
- (f) Any person who shall violate any of the provisions of this section, shall be deemed guilty of a municipal offense upon conviction thereof and shall be subject to the penalties prescribed under the general penalty section 1-9.

Sec. 32-51 – Regulating sale of spray paint to minors.

- (a) Prohibited acts.
  - (1) No person shall sell or otherwise transfer any spray paint to a minor, being any person under the age of 18 years, unless the minor is accompanied by a parent or legal guardian at the time of purchase or transfer.
  - (2) No minor shall, at the time of purchase of any spray paint container, furnish fraudulent evidence of majority. Proof of age may be shown by any document which contains a picture of the person issued by a governmental agency,

including but not limited to a motor vehicle operator's license or military identification card. Such document shall be prima facie proof of age.

- (3) No minor shall, except while accompanied by a parent or legal guardian, possess a spray paint container on any public property or private property except with the express permission of the lawful owner or manager of said private property, or appropriate official of said public property.
- (4) Any person violating any provision this article and is convicted thereof shall be fined not less than \$100.00 or more than \$500.00 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- (5) Any person who owns, manages or operates a place of business where aerosol containers of paint capable of defacing property are sold shall conspicuously post a copy of this regulation in such place of business, in letters at least three-eighths of an inch high.

Secs. 32-52 – 32-64. – Reserved.

**PASSED, ADOPTED AND APPROVED** by vote of the Town Council of the Town of Silver City, Grant County, New Mexico, this 8th day of March, 2022.

TOWN OF SILVER CITY

(Seal)

/s/ \_\_\_\_\_

Ken Ladner, Mayor



ATTEST:

/s/\_\_\_\_\_

Alfred Sedillo, Town Clerk