

VILLAGE OF MOSQUERO

ORDINANCE NO. 2007-03

DEFINITIONS:

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

ABANDONED VEHICLES: Any vehicle left upon a street, alley, or other way of the village longer than 96 hours, incapable of moving under its own power, not bearing current license plates or having 1 or more flat tires, or partially dismantled shall be presumed to have been "abandoned."

DANGEROUS CONTAINERS: Any refrigerator, icebox, or other device having an automatic lock on a compartment large enough to enclose a human being, and from which the door has not been removed, shall be presumed to have been "abandoned," if exposed at any place accessible to children.

JUNK: Any worn-out, discarded, or abandoned materials, including, but not limited to refuse, rubbish, old rags, metals, rubber, glass, parts of machines and vehicles, refrigerators, waste paper, cloth, and textiles having only salvage value. An accumulation of 1 or more partially dismantled or wrecked automobiles or portions thereof not capable of moving under their own power, plainly not under repair for a period of more than 48 hours or not bearing license plates of the current year shall be prima facie considered **JUNK**.

JUNK, UNSHELTERED: Junk placed upon, permitted to be placed, or to remain more than 30 days upon any property for which a junkyard license is not held, except the property which is securely enclosed against trespassing and surrounded by buildings or a solid fence, adequate to obscure the junk from public view. The use of a tarp to "shield" the junk shall not be acceptable means. Junk shall be permissible if it is neatly stacked or arranged in an orderly fashion. If the contents of any unlicensed junkyard shall be piled higher than the obscuring fence or building, the storage shall be deemed to be unsheltered.

NUISANCE:

(1) Any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition, or thing in the Village either:

(a) Injures or endangers the comfort, repose, health, safety, morals, and welfare of others;

(b) Unlawfully interferes with, obstructs, or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; and/or

(2) Any definition of declaration by the Village Trustees of a **NUISANCE** or "public nuisance" in any provision of this code or other ordinance of the village shall be included within the definition of the word **NUISANCE**, for the purpose.

PERSON. Any **PERSON**, firm partnership, association, corporation, company, or organization of any kind.

PROPERTY. Any real property within the village which is not a street, highway, or alley.

STREET, HIGHWAY, OR ALLEY. The entire width between the property lines of every dedicated way, whether open to public travel or not, including, but not limited to, the portion of the way actually opened or capable of being opened for vehicular travel.

VEHICLE. A machine propelled or intended to be propelled by power other than human power, designed to travel along the ground by use of wheels, treads, runners, or slides, and to transport persons or property or pull machinery, including, but not limited to the **VEHICLES** as an automobile, truck trailer, motorcycle, tractor, buggy, and wagon.

WAY. All dedicated streets, highways, and alleys within the village, whether presently opened for vehicular travel or other public use or not, including all portions of the way between the property lines on either side of the way.

GENERAL PROHIBITION.

It shall be unlawful for any person to cause, permit, maintain, or allow the creation or maintenance of a nuisance.

PROHIBITED NUISANCES.

Section 1

The maintaining, using, placing, depositing, leaving, or permitting to be or remain on any public or private property in the city of any of the following items, conditions, or actions

are hereby defined and declared to be and found to constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting, or restrictive:

(A) *Weeds/trees.* Any owner, his or her agent, lessee, or occupant planting or allowing weeds and/or other plant growth higher than 12 inches and existing unkempt in ungroomed condition and exhibiting a fire hazard on: their parcel of ground; land areas abutting the parcel extending to the curb or edge of the traveled roadway in cases where there is no curb; and/or to the center line of the abutting alley(s). Trees in the described areas shall be kept neatly trimmed by the abutting property owner(s) or occupants so as not to obstruct traffic or pedestrians. The trees shall be located no closer than 2 feet to the back of the curb or ditch line to accommodate sidewalks and so as not to block the motorist's view of pedestrians near the curbs. Sidewalks located in the abutting areas shall be kept safe and in good repair at all times by the owner, his or her agent, lessee, or occupant.

(B) *Other.*

(1) Accumulation of rubbish, trash, refuse, litter, junk, and other abandoned materials, metals, lumber, or other things;

(2) Unsheltered junk;

(3) Abandoned vehicles;

(4) Dangerous containers;

(5) Any condition which provides harborage for rats, mice, snakes, and other vermin;

(6) Any building or other structure which is in a dilapidated condition that it is unfit for human habitation, or kept in an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located. Any condition that is not attractive and dangerous to the public, such as a vacant accessible building, excavation, dilapidated wall, and fences and barbed wire fences along public ways, woodpiles, and debris on vacant lots which may constitute a hazard to health and welfare to the public who may not be able to recognize those dangers;

(7) The carcasses of animals or fowl not disposed of within 24 hours of death;

(8) The pollution of any public well or cistern, stream, lake, canal, or body of water by sewage, dead animals, creamery, or other industrial waste or other substances;

(9) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground;

(10) The placing of any scale, showcase, or display cabinet for goods on or across any curb or sidewalk, street, or alley of the village, except when otherwise authorized pursuant to this ordinance, provided that a minimum of 4 feet of sidewalk right-of-way can be maintained open for pedestrian travel for special sale days or other special events; and/or

(11) Canvas awnings extending horizontally more than 12 feet from the building to which they are attached or the lowest part of which is less than 7 feet from a sidewalk, street, alley, or other public way.

IMPOUNDING OF ABANDONED VEHICLES.

Section 2

(A) The Chief of Police or any member of his or her department designated by him or her is hereby authorized to remove or have removed any vehicle abandoned within the village.

(B) The vehicles shall be impounded until lawfully claimed or until disposed of in accordance with the provisions of NMSA 29-1-13 to 29-1-15, which provide for the disposal of unclaimed personal property by municipalities.

(C) The fees for towing any vehicle away for impoundment shall be at the actual cost of the towing company to storage rate shall be at towing company's fee per vehicle in the garage or other place of impoundment as the Chief of Police shall designate from time to time.

ALTERNATIVE ENFORCEMENT.

Section 3

(A) *Notice; abatement; hearing.*

(1) The provisions of this section are offered as alternate enforcement provisions of the ordinance only for absentee owners and occupants or agents unable or unwilling to abate their nuisance(s) under conventional enforcement methods.

(2) Whenever a nuisance as defined in this ordinance is found to exist within the village, the Village Administrator/Clerk, or other duly designated officer of the village may give written or published notice to the owner, his or her agent, lessee, or occupant of the property upon which the nuisance(s) exists or upon the person causing or maintaining the nuisance.

(3) Every person, including the owner, his or her agent, tenant, lessee, or occupant of the property where the nuisance exists, shall abate any nuisance by removal of the nuisance within the 10 days as set forth in division (A)(2) above, or request a

hearing to the Village Council through the Village Administrator/Clerk within the 10 day period.

(4) If a request for a hearing is made within the 10-day period, the time limits of this section shall be stayed pending a decision by the Village Council.

(B) *Contents of notice.* The notice to abate a nuisance issued under the provisions of this ordinance shall contain:

(1) An order to abate the nuisance or to request a hearing before the Village Council within the 10 days written or published notice;

(2) The location of the nuisance, if the same is stationary;

(3) A description of what constitutes the nuisance;

(4) A statement of acts necessary to abate the nuisance; and

(5) A statement that if the nuisance is not abated as directed then the Village may abate the nuisance and assess the cost thereof against the person, or take any other action as allowed by law.

(C) *Service of Notice.*

(1) The notice shall be served in person or by certified and regular mail or, in the event the owner or occupant cannot be found, the notice shall be completed by posting the notice on the property for 10 days.

(2) Upon the failure of the person upon whom notice to abate a nuisance was served pursuant to the provisions of this ordinance to abate the same after 30 days, the designated officer for the village may proceed to abate the nuisance and shall prepare a statement of costs incurred in the abatement thereof.

(3) Any and all costs incurred by the village in the abatement of a nuisance under the provisions of this ordinance shall constitute a lien against the property which the nuisance existed, which lien shall be filed, proven, and collected as provided by law. The lien shall be notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied. In the alternative, the cost of the correction shall become a line item charge on the municipal utility bill for the lot or tract, to be paid as consideration for continued municipal water, sewer, and/or garbage service.

(4) *Urgent condition.* Where the officer finds that immediate measures are required to alleviate the nuisance, the Village Council may waive the 10-day notification period in order to take whatever steps are necessary for prompt correction of the condition.

PENALTY.

Section 4

(A) (1) Whenever this ordinance as an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided thereof, the violation of any provision or the failure to perform any act shall be punishable by a fine of not exceeding \$100, in the discretion of the court.

(2) Each day any violation or failure to perform the act shall constitute a separate violation of an ordinance of this village.

(B) (1) The penalty provisions of this ordinance shall not be deemed a waiver of the right of the city to invoke the equity jurisdiction of the magistrate court in compelling abatement of any condition which constitutes a nuisance.

(2) The action for the abatement of a public nuisance shall be governed by the general rules of civil procedure.

(3) A civil action to abate a public nuisance may be brought, by verified complaint in the name of the village, by any public officer or private citizen in the magistrate court against any person who shall create, perform, or maintain a public nuisance.

(4) When judgment is against the defendant in an action to abate a public nuisance, he or she is adjudged to pay all court costs and a reasonable fee for the complainant's attorney, when the suit is not prosecuted exclusively by the Village.

In addition to, or in lieu of, the enforcement provisions of Section A. of this Ordinance, in the event that a vacant lot or non-vacant lot is not in compliance with the requirements of Section 1. of this Ordinance, the owner of such lot may be cited into Municipal Court, and upon being found by the Municipal Judge to be guilty of such violation fined in an amount not to exceed \$100 each day in which a lot is in violation shall be considered as a separate offense and may be cited as such, and a penalty shall be imposed for each such offense.