



City of Las Cruces[®]

PEOPLE HELPING PEOPLE

COUNCIL WORK SESSION SUMMARY ROUTING SLIP

Meeting Date November 10, 2014

TITLE: **ABANDONED BUILDINGS**

- Are there attachments to the Council Work Session Summary? Yes No
- Will there be a Video Presentation for this item? Yes No
- Will there be a PowerPoint Presentation for this item? Yes No
- If "yes", will a copy of the PowerPoint Presentation be included on the Council Work Session Agenda? Yes No

DEPARTMENT / ORGANIZATION	SIGNATURE	PHONE NO.	DATE
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City Manager	<i>[Signature]</i>		11-4-14



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Council Work Session Summary

Meeting November 10, 2014

TITLE: ABANDONED BUILDINGS

PURPOSE(S) OF DISCUSSION:

- Inform/Update
- Direction/Guidance
- Legislative Development/Policy

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The purpose of this item is to provide information related to abandoned buildings and construction projects. Currently the City addresses these structures by utilizing the Municipal Code chapters related to Nuisance, Buildings and Fire Safety. Staff will provide the Council with an overview of these chapters and how the chapters are applied to abandoned buildings and incomplete structures. Staff will also provide information on other *Anti-Blight Treatments* utilized by other local governments

SUPPORT INFORMATION:

1. Attachment "A", Las Cruces Municipal Code Chapter 18.

Chapter 18 - NUISANCES

FOOTNOTE(S):

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Cross reference— Health and human services, ch. 12; housing, ch. 13; solid waste, ch. 25; utilities, ch. 28. [\(Back\)](#)

State Law reference— Municipal home rule, Const. art. X, § 6; NMSA 1978, § 3-15-13. [\(Back\)](#)

ARTICLE I. - IN GENERAL

Sec. 18-1. - Definitions.

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

Nuisance means any person doing an unlawful act, omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health or safety of others;
- (2) Offends decency;
- (3) Is offensive to the senses;
- (4) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;
- (5) In any way renders other persons insecure in life or the use of property; or
- (6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

(Code 1988, § 20-1)

Cross reference— Definitions generally, § 1-2.

Sec. 18-2. - Illustrative enumeration.

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of 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 and other rank vegetation.
- (2) Accumulations of rubbish, trash, refuse, litter, junk and other abandoned materials, metals, lumber or other things.
- (3) Any condition which provides harborage for rats, mice, snakes and other vermin.
- (4) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such 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.

- (5) Any condition that is attractive and dangerous to children, such as a vacant accessible building, excavation, dilapidated wall and fences and barbed wire fences along public ways, wood piles and debris on vacant lots which may constitute a hazard to health and welfare to children who may not be able to recognize these dangers.
- (6) The infestation of trees or shrubbery by the cocoon (bags) of all members of the genus *Thyridopteryx* (bagworms) and the webs (nests) of all members of the genus *Malacosoma* of the family *Lasiocampidae* (tent caterpillars) and of all members of the genus *Hyphantria* of the family *Artiidae* (webworms) and all members of the genus *Pyrrhalta luteola* (leaf beetles).
- (7) All unnecessary or unauthorized noises and annoying vibrations, including animal noises.
- (8) 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.
- (9) The carcasses of animals or fowl not disposed of within a reasonable time after death.
- (10) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances.
- (11) Any building, structure or other place or location where any activity in violation of local, state or federal law is conducted, performed or maintained.
- (12) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.
- (13) The keeping of honey bees and hives and the keeping of hornets.
- (14) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.

(Code 1988, § 20-2)

Sec. 18-3. - Prohibited.

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

(Code 1988, § 20-3)

Sec. 18-4. - Notice to abate.

- (a) Whenever a nuisance is found to exist within the city or within the city's extraterritorial jurisdiction, the city manager or some other duly designated officer of the city may issue a petty misdemeanor summons and complaint to the offender to appear within five working days before the municipal court for violation of this section.
- (b) If a major nuisance is found to exist, a ten-day written notice to abate the nuisance may be given to the owner, his agent or occupant of the property upon which such nuisance exists or upon the person causing or maintaining the nuisance, by the city manager.

(Code 1988, § 20-4)

Sec. 18-5. - Contents of notice.

- (a) The notice to abate a nuisance issued under section 18-4 shall contain the following:
 - (1) An order to abate the nuisance or to request a hearing within a stated time, which shall be reasonable under the circumstances.
 - (2) The location of the nuisance, if the nuisance is stationary.
 - (3) A description of what constitutes the nuisance.

- (4) A statement of acts necessary to abate the nuisance.
- (5) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the city will abate such nuisance and assess the cost thereof against such person.

(b) Any person receiving notice of an order to abate a nuisance may request a hearing before the municipal court on such matter within three days from the date of filing the notice. Any notice of abatement served by the city shall advise the person allegedly committing the nuisance of his right to request a hearing before the municipal court.

(Code 1988, § 20-5)

Sec. 18-6. - Service of notice.

The notice to abate a nuisance shall be served as any other legal process may be served pursuant to law.

(Code 1988, § 20-6)

Sec. 18-7. - Abatement by city.

Upon the failure of the person, upon whom notice to abate a nuisance was served pursuant to this chapter, to abate the nuisance, the designated officer of the city shall proceed to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof.

(Code 1988, § 20-7)

Sec. 18-8. - City's costs declared lien.

Any and all costs incurred by the city in the abatement of a nuisance under this chapter shall constitute a lien against the property upon which such nuisance existed, which lien shall be filed, proven and collected as provided for by law. 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.

(Code 1988, § 20-8)

Sec. 18-9. - Alternative method of abatement.

- (a) Except as provided in this article, an action for the abatement of a public nuisance shall be governed by the general rules of civil procedure.
- (b) A civil action to abate a public nuisance may be brought by verified complaint in the name of the city without cost, by any public officer or private citizen, in the municipal court against any person who shall create, perform or maintain a public nuisance.
- (c) When judgment is against the defendant in an action to abate a public nuisance, he shall be adjudged to pay all court costs and a reasonable fee for the complainant's attorney, when the suit is not prosecuted exclusively by the city attorney.

(Code 1988, § 20-9)

Secs. 18-10—18-35. - Reserved.

ARTICLE II. - ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE MOTOR VEHICLES

FOOTNOTE(S):

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Cross reference— Traffic, ch. 27. [\(Back\)](#)

State Law reference— Disposal of abandoned vehicles, NMSA 1978, § 63-3-121. [\(Back\)](#)

Sec. 18-36. - 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 means any motor vehicle that does not display a current license plate or valid police sticker as defined in section 12-12-18(F)(2) of the Uniform Traffic Ordinance in section 27-2 and is left unattended for a period exceeding 72 consecutive hours.

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

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

Motor vehicle means any 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 vehicles, and motor homes.

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

Public property means any street or alleyway or right-of-way or parkway or highway, which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and also means other publicly owned property or facility.

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

(Code 1988, § 20-21)

Cross reference— Definitions generally, § 1-2.

Sec. 18-37. - Prohibited.

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 or wrecked or dismantled or inoperative or partially dismantled condition, whether attended or not, upon any private or public property within the city for a period of time in excess of 72 hours. The presence of an abandoned or wrecked or dismantled or inoperative or partially dismantled vehicle or parts thereof (except such parts that have been reconstructed or converted for practical use) on public property or private property is declared a public nuisance which may be abated in accordance with this article. This section shall not apply to:

- (1) Any vehicle within an enclosed area and out of public view on private property or to any vehicle held in connection with a business enterprise, lawfully licensed by the city and properly operated in the appropriate business zone, pursuant to the zoning laws of the city; or
- (2) Any person who has obtained a permit for restoration of a motor vehicle pursuant to section 18-38.

(Code 1988, § 20-22)

Sec. 18-38. - Permits for restoration of motor vehicles.

Any person, upon payment of a fee of \$15.00, may obtain a permit for the restoration of a motor vehicle from the police department. The permit shall specify the type of vehicle to be restored, the location of the vehicle and the time requested for restoration, provided that in no event shall the time

allowed for restoration exceed 18 months. No more than one permit per location may be issued and outstanding at any one time.

(Code 1988, § 20-23)

Sec. 18-39. - Notice to remove.

Whenever it comes to the attention of the police department that any nuisance, as defined in section 18-37, exists in the city, notice in writing 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 if the nuisance involves a vehicle left upon public property, notice shall be given to the owner of the vehicle or his agent, notifying them of the existence of the nuisance and requesting its removal in the time specified in this article.

(Code 1988, § 20-24)

Sec. 18-40. - Responsibility for removal.

Upon proper notice and opportunity to be heard, the owner of the abandoned or wrecked or dismantled or inoperative vehicle and the owner or occupant of the private property on which the vehicle is located, either or all of them, shall be responsible for its removal. If the abandoned or wrecked or dismantled or inoperative vehicle is located on public property, the owner of the vehicle or his agent shall be responsible for its removal. If removal and disposition is performed by the city, the owner or occupant of the private property where the vehicle is located shall be liable for expenses incurred or, if circumstances are such, the owner of the vehicle left on public property.

(Code 1988, § 20-25)

Sec. 18-41. - Notice procedure.

Under this article, the police department shall give notice of removal to the owner or occupant of the private property where it is located, at least 30 days before the time of compliance, which shall be set forth in the notice. If the nuisance involves a vehicle on public property, notice shall be given to the owner of the vehicle or his agent, at least ten days before the time of compliance, which shall be set forth in the notice. It shall constitute sufficient notice when a copy of such is posted in a conspicuous place upon the private property on which the vehicle is located or a copy of the notice is posted on the vehicle which is parked on the public property and duplicate copies are sent by registered mail to the owner of the vehicle left on public property or his agent or to the owner or occupant of the private property at his 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 as soon as practicable after reasonable and diligent efforts to give notice as provided in this section proves fruitless.

(Code 1988, § 20-26)

Sec. 18-42. - Contents of notice.

The notice issued pursuant to this article shall contain the request for removal within the time specified in this article, and the notice shall advise that upon failure to comply with the notice to remove the city or its designee, which may include a wrecker service, shall undertake such removal with the cost of removal to be levied against the owner or occupant of the property, or if the circumstances are such, the owner of the vehicle left on public property or his agent.

(Code 1988, § 20-27)

Sec. 18-43. - Request for hearing.

Under this article, the persons to whom the notices are directed or their duly authorized agents may file a written request for hearing before the municipal court judge within the 30-day period of compliance prescribed in section 18-41 for the purpose of defending the charges by the city.

(Code 1988, § 20-28)

Sec. 18-44. - Procedure for hearing.

The hearing requested pursuant to section 18-43 shall be held as soon as practicable after the filing of the request, and the persons to whom the notices are directed shall be advised of the time and place of the hearing at least three days in advance thereof.

(Code 1988, § 20-29)

Sec. 18-45. - Removal of motor vehicle from property.

If the violation described in the notice has not been remedied within the time period of compliance specified in this article, or if a notice requesting hearing is timely filed, a hearing is had and the existence of the violation is affirmed by the municipal judge, the city shall have the right to remove the motor vehicle from the premises. It shall be a petty misdemeanor for any person to interfere with, hinder, or refuse to allow such person to enter upon the private property or public property for the purpose of removing a vehicle under this article.

(Code 1988, § 20-30)

Sec. 18-46. - Notice of removal.

Within 48 hours of the removal of such vehicle as provided in section 18-45, the city shall give notice to the registered owner of the vehicle, if known, and also to the owner or occupant of the private property, if applicable, from which the vehicle was removed, that the vehicle has been impounded and stored for violation of this article. The notice shall give the location where the vehicle is stored and the costs incurred by the city for removal.

(Code 1988, § 20-31)