

Town of Estancia

ORDINANCE NO. _____

AN ORDINANCE RELATING TO THE ABATEMENT OF NUISANCES; HEALTH AND SANITATION

**BE IT ORDAINED BY THE GOVERNING BODY OF THE MUNICIPALITY OF THE
TOWN OF ESTANCIA, NEW MEXICO:**

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SECTION 1. NUISANCES DEFINED

§ 1.1 SHORT TITLE.

This ordinance shall be known as the Town of Estancia Nuisance Ordinance.

§ 1.2 PURPOSE.

- A. It is the purpose of this ordinance to protect the health, safety and welfare of the residents of the Town by eliminating public nuisances and protecting property from blighting and deteriorating conditions by establishing minimum standards governing the maintenance, appearance and conditions of all residential and non – residential premises.
- B. This ordinance shall apply to all buildings, structures and lands within the Town without regard to use, the date of construction, improvement or alteration.
- C. This ordinance conveys to the Town administration, in accord with the procedures set out below, all necessary and proper powers to remedy nuisance conditions and to charge the costs of such action to those responsible, and against the properties themselves. This ordinance is an exercise of the Town's police power, and it shall be liberally construed to effect this purpose.

§ 1.3 DEFINITIONS.

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

- A. **ABANDONED VEHICLE.** A motor vehicle which has remained for more than seventy – two (72) hours in a condition described by one of the following;
 - 1. Without license plates or a temporary registration conspicuously displayed thereon; or
 - 2. With license plates which have an expiration date more than ninety (90) days prior to the date of inspection.
- B. **BLIGHT or BLIGHTED.** Unsightly conditions including the accumulation of debris; fences characterized by holes, breaks, rot, crumbling, cracking, peeling or rusting; landscaping that is dead, characterized by uncontrolled growth or lack of maintenance, or is damaged and any other similar conditions of disrepair and deterioration regardless of other properties in the area.
- C. **CODE ENFORCEMENT OFFICER.** An authorized Town official, duly appointed or commissioned by the Mayor, including but not limited to a Town police officer, and Town fire chief or designee.
- D. **COLLECTOR.** An individual, association, corporation, partnership or other legal entity which buys or otherwise acquires, maintains, shows, restores, sells, dismantles, or otherwise

disposes of vintage or special interest vehicles for the purpose of maintaining one or more vintage and/or special interest vehicles for reasons of historical interest.

- E. **ENCLOSED STRUCTURE.** A structure at least six (6) feet in height or tall enough to eliminate the public's view, including neighbors, of the interior and meets all applicable building codes.
- F. **FIRE HAZARD.** Any thing or act which may increase or may cause any increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by the Town of Estancia Fire Department personnel authorized to exercise the powers and duties required in administering and enforcing the Town's Fire Code, or which may obstruct, delay or hinder the prevention, suppression of extinguishment of fire.
- G. **HAZARDOUS WASTE.** Any chemical compound, mixture, substance or ordinance which is identified or listed by the United States Environmental Protection Agency or appropriate agency of the state, except that, for the purpose of this ordinance, hazardous waste shall include household waste.
- H. **HEALTH HAZARD.** The presence of any items that adversely impact or jeopardize the well – being or health of an individual. Such items include, but are not limited to, human waste, medical or biological waste, sharps, gaseous, or combustible materials, radioactive waste, dangerous or corrosive chemicals or liquids, flammable or explosive materials, friable asbestos, offal and decay matter.
- I. **INOPERATIVE or INOPERABLE VEHICLE.** Any motor vehicle that by reasons of dismantling, disrepair or other cause is incapable of being propelled under its own power.
- J. **MOTOR VEHICLE.** Any wheeled vehicle which is self-propelled or intended to be self-propelled.
- K. **NUISANCE.** 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 Town either: (a) injures or endangers the comfort, repose, health or safety of others; or (b) offends decency; or (c) is offensive to the senses; or (d) unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or (e) in any way renders other persons insecure in life or the use of property; or (f) essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.
- L. **PUBLIC NUISANCE.** Knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either: (a) injurious to public health, safety, morals or welfare; or (b) interferes with the exercise and enjoyment of public rights, including the right to use public property.
- M. **PUBLIC RIGHT – OF – WAY.** Paved or unpaved streets and adjoining public real property, alleys, drainage, gutter or other public easements and lined or unlined drainage channels which comprise the municipal storm drainage system.

- N. **RESPONSIBLE PARTY.** An occupant, lessor, lessee, manager, licensee or other person having control over a structure or parcel of land; and in the case where the demolition of a structure is proposed as a means of abatement, any lienholder whose lien interest is recorded in the official records of the Torrance County Assessor's Office.
- O. **SOLID WASTE.** Includes, but is not limited to any garbage, litter, refuse, rubbish, special waste, discarded appliances, debris and other discarded materials originating from residential, commercial or industrial sources, and including any solid waste which requires special handling or a special sign (such as incinerator ash, infectious and non-infectious medical waste, petroleum products, hazardous waste and tires).
- P. **SPECIAL INTEREST VEHICLE.** A motor vehicle not less than twenty-five (25) years old which has not been altered or modified from original manufacturer's specifications, which is being preserved or restored by a collector for its historical value.
- Q. **VINTAGE VEHICLE.** A passenger car or truck which is at least thirty-five (35) years old and is being preserved or restored by a collector for its historical value.
- R. **WEEDS.** All rank, noxious, poisonous, harmful, unhealthful vegetation, or any growth whatsoever of an offensive nature or which is deleterious to the public health and safety, and includes plants that, by reason of abandonment, lack of care or lack of maintenance, choke out growth of other plant material in the area, and dead, dying or unattended plant life which is abandoned or overgrown.

§ 1.4 UNLAWFUL ACTIVITY.

It is unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance. Whoever commits a public nuisance for which the act or penalty is not otherwise prescribed by law is guilty of a petty misdemeanor. Any violation of this ordinance shall be subject to the criminal penalties set forth in this ordinance.

§ 1.5 NUISANCES DECLARED.

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:

- A. Noxious weeds and other rank vegetation.
- B. Accumulations of rubbish, trash, refuse, litter, junk and other abandoned materials, metals, lumber or other things.
- C. Any condition which provides harborage for rats, mice, snakes and other vermin.

- D. 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.
- E. Any condition that is attractive and dangerous to children, such as a vacant accessible building, excavation, dilapidated wall and fences, wood piles and debris on vacant lots which may constitute a hazard to health and welfare of children who may not be able to recognize these dangers.
- F. 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)
- G. All unnecessary, unauthorized or excessive noises and annoying vibrations, including animal noises, provided that this section shall not in any way restrict or limit sounds emanating from organized and sponsored outdoor recreational, school, or athletic events that are part of a regularly scheduled or permitted program of activity; or sounds from safety, warning or emergency signals and devices.
- H. All disagreeable or obnoxious odors and stench, as well as the conditions, substances or other causes, which give rise to the emission or generation of such odors and stench.
- I. The carcasses of animals or fowl not disposed of within a reasonable time after death.
- J. 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.
- K. Any building, structure or other place or location where any activity in violation of local, state or federal law is conducted, performed or maintained.
- L. Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.
- M. The keeping of honey bees and hives and the keeping of hornets.
- N. Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.
- O. The obstruction of any fire hydrant, fire department connection or fire protection system control valve that would prevent the equipment or hydrant from being immediately discernable or in any other manner deter or hinder the firefighters from gaining immediate access to the equipment or hydrant.

SECTION 2. PROPERTY MAINTENANCE

§ 2.1 BUILDINGS AND STRUCTURES.

- A. All exposed exterior surfaces shall be maintained so as to be free of deterioration that is a threat to health and safety, or shall not otherwise present a deteriorated or blighted appearance. Examples of the deterioration and blight include, but are not limited to:
1. Stucco or paint that is deteriorated, indicated by peeling, flaking, cracked, blistering or mildew, resulting in exposed, bare unprotected surfaces over more than thirty percent (30%) of the exterior.
 2. Window screening that is not maintained in good condition.
- B. All structures on the premises shall be safe, structurally sound and shall be maintained so that they do not constitute a hazard, blight or condition of disrepair. Examples of hazards, blight or conditions of disrepair includes, but are not limited to, leaning fences, fences that are missing numerous slats or blocks, graffiti, peeling paint, deterioration of paint or materials, and rotting or damaged materials.
- C. Roofs of buildings shall be maintained so that they are structurally sound and in a safe condition and have no defects which might admit rain or cause dampness in the interior portions of a building. All portions, additions or sections of a roof including, but not limited to, the fascia, eave, soffit, sheathing, rafter tail, barge rafter, vent screening, gutter, downspout, roof jack, and metal flashing, shall be complete with all trim strips, moldings, brackets, braces and supports attached or fastened in accordance with common building practices. Roof drainage shall be adequate to prevent rainwater from causing dampness or deterioration in the walls or interior portion of the building.
- D. No premises, building or structure, wall, fence, pavement or walkway shall be painted in a garish manner, or in bright, fluorescent, or luminescent colors, which is out of harmony or conformity with the standards of adjacent properties.

§ 2.2 PREMISES AND VACANT LAND.

- A. *General land.* All land, including exterior premises and vacant land, whether improved or unimproved, shall be maintained free from any accumulation of debris or blight, which includes, but is not limited to, graffiti on walls, fences or mail boxes, accumulation of litter, rubbish, refuse, waste material, bottles, paper, glass, cans, organic or inorganic material, inoperable or disabled vehicles, piles of mixed material, dry vegetation, rags, empty barrels, boxes, crates, packing cases, mattresses, bedding, lumber not neatly piled, lumber stored in front yards, scrap iron, tin and other metal not neatly piled, or anything whatsoever in which insects, rodents, snakes or other harmful pests may live, breed or multiply or which may otherwise create a health hazard.
- B. *Streets, alleys and sidewalks.* The owner and any other responsible party in control of any land abutting a sidewalk, alley or street shall maintain the sidewalk, alley or street area in the same manner as provided in subsection A, above.

- C. *Stored materials.* It shall be unlawful to accumulate and store building material, lumber, boxes, cartons or other containers, machinery, scrap metal, junk, raw material, fabricated goods and other items in a manner as to constitute a public nuisance or rodent harborage.
- D. *Exterior insect, rodent and animal control.* All premises shall be kept free from insect and rodent infestation and other noxious pests. The provision shall not require action to disturb the natural activity of bees, rabbits, or other insects and animals where the activity is not a danger or nuisance to any resident or residents of the area and where other applicable legal requirements are met.
- E. *Drainage.* All premises shall be maintained so as to prevent the accumulation of stagnant water when the water causes a hazardous or unhealthy condition or become a breeding area for insects. This does not apply to Town – approved retention basins or similar conditions.
- F. *Solid waste receptacles.* All solid waste receptacles shall be maintained in a clean and sanitary condition by the owner or person using the receptacle and the receptacles shall be located only in places as shall be readily accessible for removing and emptying the same, but shall not be placed in a place or position as may constitute a nuisance or obstruction to vehicular or pedestrian traffic.
- G. *Unoccupied or Vacant Structures.* An unoccupied or vacant building, structure or any part thereof shall be kept secured by the owner against unauthorized entry and water damage.

§ 2.3 RUINED, DAMAGED AND DILAPIDATED BUILDINGS AND STRUCTURES.

New Mexico Statutes Annotated (1978) Section 3-18-5 (2011), regarding the ability of a municipality to require the removal from the municipality of a building or structure that is ruined, damaged and dilapidated, is incorporated by reference into this ordinance and considered to be a part hereof.

§ 2.4 INOPERABLE OR ABANDONED VEHICLES.

- A. *General Prohibition.* It is unlawful for any owner or occupant of any lot within the Town limits to store on, place on, or permit to be stored or placed on, or allowed to remain on any occupied or unoccupied land within the Town limits, a dismantled, partially dismantled or inoperative motor vehicle, or any parts of a motor vehicle, except in areas where such activity is within the contemplated purposes of duly licensed businesses and where such vehicles are kept in wholly enclosed garages or structures. Vehicles shall not be used for storage or other purposes unless enclosed within a building or garage on the premises.
- B. *Applicability.* This section shall not apply to the following conditions, which shall constitute an affirmative defense:

1. The vehicle or part thereof is completely enclosed within a building in a lawful manner where it is not visible from a street or other public or private property; or
 2. The vehicle or part thereof is stored or parked on the lawfully zoned and licensed vehicle repair or storage business, a vehicle dealership, or junkyard; or
 3. A maximum of one vehicle per lot or parcel of real property shall be permitted if said vehicle is entirely covered with a one-piece opaque heavy tarp or commercial car cover, securely fastened at all times, and placed in the side or back yard; or
 4. The vehicle is screened by a solid concealing fence of at least six (6) feet in height, rapidly growing trees, shrubbery, or combination thereof or other appropriate means, rendering the vehicle not visible to persons on adjacent private or public property to the extent concealment can be reasonably obtained under the conditions of topography and other attendant circumstance; or
 5. A maximum of one vehicle per lot or parcel of real property is permitted if the vehicle is currently undergoing repair or is awaiting the settlement of an insurance claim, provided the vehicle is removed or brought into compliance within ninety (90) days; or
 6. The vehicle is the property of a member of the armed forces of the United States who is on active duty assignment.
- C. *Public Roadways.* This section shall not be construed to permit the parking or placement of inoperable or abandoned motor vehicles on any public roadways, streets, and rights of way. Placement of inoperable vehicles on any public roadway, street, or right of way is subject to enforcement by the Town of Estancia Police Department.
- D. *Notice.* The appropriate Code Enforcement Officer shall serve written notice to the owner or occupant of the property upon which a dismantled, inoperable or wrecked vehicle(s) is located. Written notice shall be served by certified mail, return receipt requested, to the owner and/or occupant of the property, if known, and be posted on the vehicle, and shall, at a minimum, contain the following:
1. A statement of the nature of the nuisance which refers to this Section;
 2. A demand that the vehicle(s) be removed within thirty (30) days of the receipt of the notice;
 3. A statement indicating that failure to remove the vehicle(s) within thirty (30) days of receipt of the notice or to request a hearing within that time will result in the vehicle being removed and impounded or disposed of and all costs associated with the removal and disposal of the vehicle being assessed jointly and severally against the owners of the vehicle. Further, the owner or occupant may be subject to a maximum fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed ninety (90) days or by both such fine and

imprisonment in the discretion of the court. Each day any such violation of failure to perform such act shall continue shall constitute a separate offense and a separate violation of an ordinance of this Town, unless otherwise specifically provided.

When the owner of the property is not otherwise known, such owner shall be identified from the records of the Torrance County Assessor for purposes of mailing notice under this section. In lieu of mailed notice, notice may be given by personal service.

- E. *Extension of Time.* Any person who has been issued a written notice of violation of this Section may submit a written request to the appropriate Code Enforcement Officer for an extension of time not to exceed thirty (30) days to remove the vehicle pursuant to Section 3.2(E). An owner or occupant may apply to the Town for a permit to allow an extension of time beyond (30) days in exceptional circumstances. Application for said permit shall be made to the Code Enforcement Officer and granted by the Planning and Zoning Commission in its sole discretion. The permit shall be valid for a maximum of one year from the date of issuance.
- F. *Permit for Vintage, Collector or Restoration.* An owner or occupant may apply to the Town for a permit to allow for the storing and restoration of a vintage vehicle, collector vehicle, or a vehicle owner or occupant intends to restore. Application for said permit shall be made to the Code Enforcement Officer and granted by the Planning and Zoning Commission in its sole discretion. The permit is valid for one year from the date of issuance but may be renewed at the discretion of the Planning and Zoning Commission upon a demonstration by the owner that restoration is under way.
- G. *Removal.* If a dismantled, inoperable or wrecked motor vehicle is not removed within thirty (30) days of the date on which the notice prescribed by Section 2.5(D) is mailed to the owner and/or occupant of the property, the Town may, after obtaining an administrative search warrant from a court of proper jurisdiction, cause the vehicle to be removed and disposed of, unless a hearing requested by the owner or occupant of the property is pending. The court may also order that the defendant pay the Town for the costs of removal, disposition, court costs, reasonable attorney's fees and fines, and forfeit all proceeds of the motor vehicle to the Town of Estancia.

§ 2.5 WASTEWATER.

- A. *Wastewater.* It shall be unlawful for any person, business, firm, corporation, or municipal facility or operation shall waste, cause or permit to be wasted or applied to non – beneficial uses, as defined in this ordinance, any water furnished by any water supply system, public or private, within the Town.
- B. *Non-Beneficial Uses of Water.* Waste or non – beneficial uses of water shall include, but are not limited to, the following:

1. Landscape water applied in such a manner, rate, or quantity that it regularly overflows the landscaped area being watered and runs onto or seeps into adjacent property or public right – of – way;
2. Landscape water that leaves a sprinkler, sprinkler system, or other application device in such a manner or direction as to spray onto adjacent property or public right – of – way; and
3. Washing down of vehicles or hard surfaces such as parking lots, aprons, pads, driveways, or other surfaced areas when water is applied in an excessive quantity to flow from that surface onto adjacent property or the public right – of – way.

C. *Exceptions.* Waste or non – beneficial uses of water shall not include:

1. Flow resulting from fire fighting or routine inspection of fire hydrants or from training activities;
2. Water applied as a dust control measure as may be required;
3. Water applied to abate spills of flammable or otherwise hazardous materials;
4. Water applied to prevent or abate health, safety or accident hazards when alternate methods are not available;
5. Water which reaches or flows onto adjacent property or public right – of – way when caused by an act of nature;
6. Flow resulting from a routine inspection or maintenance of water supply system within the municipality;
7. Flow resulting from commercial or individual residential applications on an occasional basis, such as washing of vehicles, boats, driveways, sidewalks or municipal flushing of streets;
8. Water used in the course of installation or maintenance of traffic – control devices; or
9. Water used by contractors or utilities in saw – cutting of pavement, compaction or other use required under terms of their contract.

SECTION 3. NOTICE AND ENFORCEMENT PROCEDURES

§ 3.1 ADMINISTRATION AND ENFORCEMENT.

- A. *Responsibility.* Every owner, occupant, lessee or holder of any possessory interest of a residence or other private property within the Town of Estancia is required to maintain, manage and supervise the property and all persons thereon in a manner so as not to

violate the provisions of this ordinance. The owner of the property remains liable for such violations regardless of any contract or agreement with any third party regarding the property.

1. The responsible person shall not conduct, aid, allow, permit or condone a public nuisance at a residence or other private property.
 2. If a responsible person for the nuisance is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for any costs incurred pursuant to this section.
- B. *Enforcement Authority.* Except as otherwise provided in this ordinance, the appropriate Code Enforcement Officer shall enforce this ordinance.

§ 3.2 NOTICE AND COMPLAINT.

- A. *Written Complaint.* Any person aggrieved by a violation or apparent violation of this ordinance may file a written complaint with the appropriate Code Enforcement Officer, who shall investigate the complaint and take action to have the violation penalized and removed, if a violation is found to exist.
- B. *Notice to Abate.* Any appropriate Code Enforcement Officer, upon observing any violation of this ordinance, shall issue a notice directed to the owner of record of the property on which the nuisance occurs, or to the occupant or tenant of the property or both.
- C. *Contents of Notice.* Unless specifically provided otherwise in this ordinance, the notice to abate a nuisance described in Subsection B, above, shall contain:
1. An order to abate the nuisance or to request a hearing within the stated time, which shall be reasonable under the circumstances;
 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;
 5. A statement advising the recipient of his / her right to request a hearing before the Town of Estancia Board of Trustees;
 6. A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the Town may abate such nuisance and assess the cost thereof against such person and any applicable party, and that the owner or occupant may be subject to criminal penalties of a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed ninety (90) days or by both.

- D. *Service of Notice.* A notice to abate a nuisance issued under the provisions of this ordinance may be served either personally or by certified mail at the owner's or occupant's last known address. If the owner, as shown by the real estate records of the Torrance County Assessor, occupant or agent in charge of the property cannot be served within the Town, a copy of the notice shall be posted on the property and a copy of the notice shall be published one time in a newspaper of local circulation.
- E. *Extension of Time.* Any person who has been issued a written notice of violation of this ordinance may submit a written request to the appropriate Code Enforcement Officer for a reasonable extension of time of the period for abatement and / or removal of the nuisance, not to exceed an additional thirty (30) days, which may be granted in the reasonable discretion of the appropriate Code Enforcement Officer.
- F. *Hearing.* Any person receiving notice of an order to abate a nuisance may request a hearing before the Estancia Board of Trustees on such matter within the proscribed period of abatement as provided in the notice by filing a written request with the Estancia Town Clerk.
- G. *Abatement by Town.* Upon the failure of the person upon whom notice to abate a nuisance was served pursuant to the provisions of the ordinance to abate the same, the appropriate Code Enforcement Officer shall proceed to obtain a court order to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof. In addition to remedies necessary to abate the nuisance, the Town shall be entitled to costs and reasonable attorney's fees.
- H. *Town's Costs Declared Lien.* Any and all costs incurred by the Town in the abatement of a nuisance under this ordinance 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.
- I. *General Penalty for Violations; Continuing Violations.*
1. Whenever in this ordinance an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor or a petty 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 therefor, the violation of any such provision or the failure to perform any such act shall be punishable by a fine of not exceeding five hundred dollars (\$500.00) or by imprisonment not to exceed ninety (90) days or by both such fine and imprisonment in the discretion of the court.
 2. Each day any such violation or failure to perform such act shall continue shall constitute a separate offense and a separate violation of an ordinance of this Town, unless otherwise specifically provided.

- J. *Remedies Cumulative.* The remedies provided in this section are cumulative and supplementary to each other, to other civil remedies, and any administrative proceedings to revoke, suspend, fine, or take other action against any license. The Town may pursue the remedies provided in this section, or other ordinances or statutes, other civil actions or remedies, administrative proceedings against a license, or any one or more of them, and may do so simultaneously or in succession.
- K. *Private Actions.* In addition to any civil action filed by the Town to abate any nuisance, a private citizen, in the name of the Town may also bring an action under this section.
- L. *Severability.* The requirements and provisions of this section and their parts, subparts and clauses are severable. In the event that any requirement, provision, part, subpart or clause of this section, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid or unenforceable, it is the intent of the Town that the remainder of the section be enforced to the maximum extent possible consistent with the Town's purpose of abating public nuisances.

§ 3.3 INJUNCTIONS.

The appropriate Code Enforcement Officer, when a nuisance exists as set forth in this ordinance, may maintain a complaint in the name of the municipality, perpetually, to enjoin all persons from maintaining or permitting the nuisance and to abate the same.

§ 3.4 SUCCESSIVE OWNERS LIABLE.

Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property caused by a former owner, is liable therefor in the same manner as the one who first created the nuisance.

§ 3.5 CONFLICTING PROVISIONS.

Any Town ordinance or part of an ordinance, which is in conflict with the provisions of this ordinance, is hereby superseded to the extent that this ordinance provides more specific standards or stricter standards of compliance.

SECTION 4. UNLAWFUL ACTIVITY

§ 4.1 INTENT.

A. The abatement of public nuisances for the protection of public health, safety, and welfare is a matter of local concern. The purpose of this section is to prevent the use of property as a public nuisance.

B. In order to ensure that the remedies provided in this section are applied in good faith and for the purposes of public nuisance abatement, the following shall apply:

(1) No Town employee's or law enforcement officer's employment or level of salary shall depend upon the frequency or quantity of actions and remedies under this section that he or she produces.

(2) All civil seizures of real property shall be made pursuant to a temporary restraining order based upon a judicial finding of probable cause and only after an opportunity for an adversarial hearing to contest the seizure has been provided.

C. This section is not intended to authorize any act expressly prohibited by state law, nor to forbid any conduct expressly authorized by state law. The provisions of this section shall be construed to avoid any such direct and express conflict.

§ 4.2 DEFINITIONS.

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

- A. **ABATE.** To bring to a halt, eliminate or, where that is not possible or feasible, to suppress, reduce, and minimize.
- B. **ALCOHOL.** Ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- C. **ALCOHOLIC BEVERAGE.** Alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.
- D. **BUILDING.** A structure, as defined herein, which is enclosed with walls and a roof so that there are no sides left open.
- E. **CODE ENFORCEMENT OFFICER.** A Town official, duly appointed by or commissioned by the Mayor, including but not limited to a Town police officer, Town fire chief or designee, authorized to enforce this ordinance.
- F. **CLOSE, TO CLOSE, or CLOSURE.** To seize the property and remove all owners, tenants, occupants and other persons and animals from the real property, vehicle, or personal property, or a specified discrete portion thereof, and to lock, board, bar, or otherwise close and prohibit all entry, access, and use of the real property, vehicle, or other personal property, or a specified discrete portion thereof, except such access and use as may be specifically ordered by the court for purposes of inventory, maintenance, storage, security, and other purposes, and to vest the sole right of possession and control of the real property, vehicle, or personal property, or a specified discrete portion thereof, in the Town of Estancia for a limited period of time defined by court order. In the case of a vehicle, closure includes impoundment.
- G. **CONTRABAND.** Any personal property which is illegal to own.

- H. **CRIMINAL STREET GANG.** Any organization, association in fact, or group of three or more persons, whether formally or informally organized, or any subgroup or affiliated group thereof, having as one of its primary activities the commission of one or more criminal acts or illegal acts, which has an identifiable name or identifying sign or symbol and whose members individually or collectively engage in or have engaged in a pattern of gang-related criminal activity.
- I. **FLIGHT.** To flee, escape, or leave the place where the public nuisance activity was committed or conducted.
- J. **JUVENILE.** Any person under eighteen years of age.
- K. **LEGAL OR EQUITABLE INTEREST OR RIGHT OF POSSESSION.** Every legal or equitable interest, title, estate, tenancy, or right of possession recognized by law and equity, including but not limited to freeholds, life estates, future interests, condominium rights, time-share rights, leaseholds, easements, licenses, liens, deeds of trust, contractual rights, mortgages, security interests, and any right or obligation to manage or act as agent or trustee for any person holding any of the foregoing.
- L. **LOUD OR UNRULY GATHERING.** A party or gathering of two or more persons at or on a residence or other private property upon which loud or unruly conduct occurs. Loud or unruly conduct includes, without limitation, the following as further defined by Town ordinance or state law:
1. excessive noise;
 2. excessive traffic;
 3. obstruction of public streets or crowds that have spilled into public streets;
 4. public drunkenness or unlawful public consumption of alcohol or alcoholic beverages;
 5. service to or consumption of alcohol or alcoholic beverages by any underage person, except as permitted by state law;
 6. assaults, batteries, fights, domestic violence, disorderly conduct, or other disturbances of the peace;
 7. vandalism;
 8. litter; and
 9. any other conduct which constitutes a threat to public health, safety, quiet enjoyment of residential property or general welfare, including that conduct defined under public nuisance herein.
- M. **PARCEL.** Any lot or other unit of real property or any combination of contiguous lots or units owned by the same person as defined herein.
- N. **PERSON.** Natural persons and every legal entity whatsoever, including but not limited to sole proprietors, corporations, limited liability companies, partnerships, limited partnerships, and associations.

O. **PERSONAL PROPERTY.** All property of every kind and nature whatsoever including cash, vehicles, animals, intangible property and contraband, but not including real property of any kind.

P. **PROPERTY.** Property of all kinds, including real property and personal property as defined herein.

Q. **PUBLIC NUISANCE.**

1. A loud or unruly gathering as defined in this section.
2. Any parcel of real property, commercial or residential, that is the subject of or that has been involved with calls for service to any law enforcement agency(ies) for violations of the criminal statutes cited in § 4.2(Q)(3) defining public nuisance and shall include 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.
3. Any parcel of real property, commercial or residential, any personal property, or any vehicle on or in which any of the following illegal activities occurs, or which is used to commit, conduct, promote, facilitate, or aid the commission of or flight from any of the following activities. For purposes of this section, the illegal activity shall have the same definition as that contained in the section of the New Mexico Statutes Annotated (NMSA), as amended, or the specified Town of Estancia ordinance, as amended, listed after the illegal activity:
 - (1) Prostitution, 30-9-2 NMSA; patronizing prostitutes, 30-9-3 NMSA; promoting prostitution, 30-9-4 NMSA; or accepting earnings of a prostitute, 30-9-4.1 NMSA; or
 - (2) Sexual exploitation of children by prostitution, 30-6A-4 NMSA; or
 - (3) Sexual exploitation of children, 30-6A-3 NMSA; or
 - (4) Trafficking in controlled substances, 30-31-20 NMSA; distributing controlled substances to a minor, 30-31-21 NMSA; distribution of a controlled substance, 30-31-22 NMSA; possession of a controlled substance, 30-31-23 NMSA; distributing a counterfeit controlled substance, 30-31-22B NMSA; distributing, manufacture, or possession of an imitation controlled substance, 30-31A-4 NMSA; sale of an imitation controlled substance to a minor, 30-31A-5 NMSA; or

- (5) Unlawful possession, delivery, manufacture or delivery to a minor of drug paraphernalia, 30-31-25.1 NMSA; or
- (6) Receiving stolen property, 30-16-11 NMSA; or
- (7) Commercial gambling, 30-19-3 NMSA; permitting premises to be used for gambling, 30-19-4 NMSA; dealing in gambling devices, 30-19-5 NMSA; or
- (8) Disorderly conduct, 30-20-1 NMSA; or
- (9) Unlawful carrying of a deadly weapon, 30-7-2 NMSA; unlawful possession of a handgun, 30-7-2.2 NMSA; negligent use of a weapon, 30-7-4 NMSA; unlawful possession of a switchblade, 30-7-8 NMSA; receipt, transportation or possession by a felon of a firearm or destructive device, 30-7-16 NMSA; or
- (10) Dangerous use of explosives, 30-7-5 NMSA; negligent use of explosives, 30-7-6 NMSA; unlawful sale, possession or transportation of explosives, 30-7-7 NMSA; possession of explosives, 30-7-19 NMSA; possession of explosive device or incendiary device, 30-7-19.1 NMSA; or
- (11) Any criminal activity by a criminal street gang as defined herein; or
- (12) Shooting at a dwelling or occupied building or shooting at or from a motor vehicle, 30-3-8 NMSA; or
- (13) Selling, serving, giving away, disposing of, exchanging, delivering, procuring, possessing or permitting the sale of alcoholic beverages to, for or by any person under lawful age or to an intoxicated person, 60-7A-16 and 60-7B-1 NMSA; or
- (14) The sale of alcoholic beverages at any place other than a valid (not suspended or revoked) licensed premises, 60-7A-4.1 NMSA; or the unlawful manufacture of alcoholic beverages, 60-7A-7 NMSA; or
- (15) The unlawful transportation or storage of any property that is the subject of a felony theft, misdemeanor theft, or theft by receiving under Chapter 30, Article 16 NMSA; or
- (16) The storage or concealment of weapons or tools used in the commission of a violent crime or tampering with evidence, 30-22-5 NMSA; harboring or aiding a felon, 30-22-4 NMSA; or
- (17) Fleeing or evading a police officer on foot or by vehicle, 30-22-1 NMSA; or escape from a peace officer, 30-22-10 NMSA; or

- (18) Dog fighting, 30-18-9 NMSA; or
- (19) Assault upon a peace officer, 30-22-21 NMSA; aggravated assault upon a peace officer, 30-22-22 NMSA; assault with intent to commit a violent felony upon a peace officer, 30-22-23 NMSA; battery upon a peace officer, 30-22-24 NMSA; aggravated battery upon a peace officer, 30-22-25 NMSA; assisting in assault upon a peace officer, 30-22-26 NMSA; disarming a peace officer, 30-22-27 NMSA; or
- (20) Incidents of excessive noises; or
- (21) Murder, 30-2-1 NMSA; or
- (22) Manslaughter, 30-2-3 NMSA; or
- (23) Incidents of assault, 30-3-1 NMSA; or
- (24) Aggravated assault, 30-3-2 NMSA; or
- (25) Assault with intent to commit a violent felony, 30-3-3 NMSA; or
- (26) Battery, 30-3-4 NMSA; or
- (27) Aggravated battery, 30-3-5 NMSA; or
- (28) Assault against a household member, 30-3-12 NMSA; or
- (29) Aggravated assault against a household member, 30-3-13 NMSA; or
- (30) Assault against a household member with intent to commit a violent felony, 30-3-14 NMSA; or
- (31) Battery against a household member, 30-3-15 NMSA; or
- (32) Aggravated battery against a household member, 30-3-16 NMSA; or
- (33) Harassment, 30-3A-2 NMSA; or
- (34) Stalking, 30-3A-3 NMSA; or
- (35) Aggravated stalking, 30-3A-3.1 NMSA; or
- (36) Kidnapping, 30-4-1 NMSA; or
- (37) Criminal use of ransom, 30-4-2 NMSA; or

- (38) False imprisonment, 30-4-3 NMSA; or
- (39) Custodial interference, 30-4-4 NMSA; or
- (40) Abandonment or abuse of a child, 30-6-1 NMSA; or
- (41) Contributing to the delinquency of a minor, 30-6-3 NMSA; or
- (42) Obstruction of reporting or investigation of child abuse or neglect, 30-6-4 NMSA; or
- (43) Unlawful carrying of a firearm in a licensed liquor establishment, 30-7-19.1 NMSA; or
- (44) Possession of explosives, 30-7-19 NMSA; or
- (45) Possession of explosive device or incendiary device, 30-7-19.1 NMSA; or
- (46) Facsimile or hoax bomb or explosive, 30-7-20 NMSA; or
- (47) False report, 30-7-21 NMSA; or
- (48) Interference with bomb or fire control, 30-7-22 NMSA; or
- (49) Incidents of littering, 30-8-4 NMSA; or
- (50) Enticement of a child, 30-9-1 NMSA; or
- (51) Accepting earnings of a prostitute, 30-9-4.1 NMSA; or
- (52) House of prostitution; public nuisance, 30-9-8 NMSA; or
- (53) Criminal sexual penetration, 30-9-11 NMSA; or
- (54) Criminal sexual contact, 30-9-12 NMSA; or
- (55) Criminal sexual contact of a minor, 30-9-13 NMSA; or
- (56) Aggravated indecent exposure, 30-9-14.3 NMSA; or
- (57) Criminal trespass, 30-14-1 NMSA; or
- (58) Breaking and entering, 30-14-8 NMSA; or
- (59) Criminal damage to property, 30-15-1 NMSA; or

- (60) Unauthorized graffiti on personal or real property, 30-15-1.1 NMSA;
or
- (61) Larceny, 30-16-1 NMSA; or
- (62) Robbery, 30-16-2 NMSA; or
- (63) Burglary, 30-16-3 NMSA; or
- (64) Aggravated burglary, 30-16-4 NMSA; or
- (65) Possession of burglary tools, 30-16-5 NMSA; or
- (66) Receiving stolen property, 30-16-11 NMSA; or
- (67) Shoplifting, 30-16-19 NMSA; or
- (68) Cruelty to animals, 30-18-1 NMSA; or
- (69) Unlawful assembly, 30-20-3 NMSA; or
- (70) Attempt to commit a felony, 30-28-1 NMSA; or
- (71) Conspiracy, 30-28-2 NMSA; or
- (72) Solicitation, 30-28-3 NMSA; or
- (73) Public nuisance, 30-8-1 NMSA; or
- (74) Violations of the New Mexico Liquor Control Act, 60-3A-1, et seq. NMSA, and 60-7A-1, et seq. NMSA; or
- (75) Violations of NFPA 101 1997 Ed. Prior to 2003; or
- (76) Violations of IFC 2003; or
- (77) Violations of the Town of Estancia Comprehensive Zoning Ordinance, Ordinance No. 11-4-1-Revised; or
- (78) Violations of the Town of Estancia Building Code [insert cite]; or
- (79) Violations of this ordinance; or
- (80) Driving under the influence of intoxicating liquor or drugs, 66-8-102 NMSA.

- R. **REAL PROPERTY.** Land and all improvements, buildings, and structures, and all estates rights and interests, legal and equitable, in the same, including, but not limited to, all forms of ownership and title, future interests, condominium rights, time-share rights, easements, water rights, mineral rights, oil and gas rights, space rights, and air rights.
- S. **RENTAL AGREEMENT.** Any written or oral agreement allowing occupancy of a residential building by a resident.
- T. **RESIDENCE OR OTHER PRIVATE PROPERTY.** A home, yard, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, whether occupied on a, temporary or permanent basis, whether occupied as a dwelling, party or other social function, and whether owned, leased, rented, or used with or without compensation.
- U. **RESIDENT.** One or more people entitled under a rental agreement to occupy all or a portion of a residential building to the exclusion of others and who actually reside(s) at such location.
- V. **RESIDENT REMOVAL.** The removal of resident(s) from their residential building as a result of an action filed by the City of Moriarty under the authority of § 4.2, or a comparable proceeding authorized by ordinance, statute or common law, to abate a nuisance resulting in the seizure, closure, receivership, sale or destruction of the residential unit.
- W. **RESIDENTIAL BUILDING.** A building or portion thereof designed or used for human habitation.
- X. **RESPONSE COSTS.** The costs associated with responses by law enforcement, fire and other emergency response providers to a nuisance at a residence or other private property including, but not limited to:
1. salaries and benefits of law enforcement, fire or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with loud or unruly gatherings, and the administrative costs attributable to such response(s);
 2. the cost of any medical treatment for any law enforcement, fire or other emergency response personnel injured responding to, remaining at or leaving the scene of a loud or unruly gathering;
 3. the cost of repairing any Town equipment or property damaged, and the cost of the use of any such equipment, in responding to, remaining at or leaving the scene of a loud or unruly gathering.
- Y. **RESPONSIBLE PERSON.** A person or persons with a right of possession in the residence or other private property on which a public nuisance is located, including, without limitation:
1. an owner of the residence or other private property;
 2. a tenant or lessee of the residence or other private property;

3. the landlord of another person responsible for the gathering;
 4. the person(s) in charge of the residence or other private property; and
 5. the person(s) who organizes, supervises, officiates, conducts or controls the gathering or any other person(s) accepting responsibility for such a gathering.
- Z. **STRUCTURE.** Anything constructed, erected, or placed upon real property which is so firmly attached to the land as to be reasonably considered part of the real estate, and includes buildings of every type and nature whatsoever.
- AA. **TENANT.** Any person who uses, resides in, or occupies property identified as a public nuisance, regardless of whether the tenant has the consent of the owner to use, reside, or occupy the property.
- BB. **UNDERAGE PERSON.** Any person under twenty-one years of age.
- CC. **VEHICLE.** Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devices moved exclusively by human power or used exclusively upon stationary rails or tracks.

§ 4.3 INNOCENT VICTIM EXCEPTION.

(A) An owner of property or responsible person whose own activities on the real property are not a nuisance or who is a victim of crime on which the nuisance is predicated shall not be in violation of this ordinance if the owner or responsible person has no knowledge of the public nuisance activity or is a victim of the public nuisance activity and, upon receiving notice of the activity constituting a nuisance, the owner or responsible person:

- (1) Demonstrates to the Town that all reasonable and available steps to terminate the public nuisance activity have been taken;
- (2) Demonstrates to the Town that the rental agreement or lease for the property contains a provision prohibiting criminal activity;
- (3) Files an appropriate report with law enforcement authorities and otherwise cooperates with such authorities in enforcing laws with respect to tenants or occupants of the property;
- (4) For residential properties, delivers to the tenant(s) responsible for the public nuisance activity a written notice of termination of the rental agreement as provided by the New Mexico Owner-Resident Relations Act and initiates necessary and appropriate legal action to remove residents involved in criminal activity where such activity can be proven; and
- (5) Enters into a written Nuisance Abatement Agreement with the Town wherein the property owner or responsible party agrees to take specific steps including but not limited to providing on-site security or otherwise take action that will abate, terminate or

eliminate the public nuisance activity on the property in exchange for the Town reserving its rights and agreeing not to initiate any legal action for public nuisance against the property owner or responsible person during the term of the agreement provided that the property owner complies with the terms and conditions of the written Nuisance Abatement Agreement and the public nuisance is eliminated, abated or terminated.

(B) Victims of domestic violence shall not be identified or named as a defendant in any civil cause of action to abate a public nuisance involving commercial or residential property.

§ 4.4 CRIMINAL ABATEMENT OF PUBLIC NUISANCE OFFENSES.

A. *Public Nuisances Prohibited.* It shall be unlawful for any owner, manager, tenant, lessee, occupant, or other person having any legal or equitable interest or right of possession in any real property, vehicle, or other personal property to intentionally, knowingly, recklessly, or negligently commit, conduct, promote, facilitate, permit, fail to prevent, or otherwise let happen, any public nuisance as defined in this section in, on or using any property in which they hold any legal or equitable interest or right of possession.

B. *Penalties for Public Nuisance Violations.*

1. Any person who violates any provision of this ordinance shall, upon conviction, be subject to a fine not exceeding \$500 or by imprisonment not exceeding 180 days or both. Each separate violation shall constitute a separate offense and every day on which any violation exists shall constitute a separate violation and offense.
2. Upon conviction of violation of this ordinance, the Town shall register the violating property with the Town agencies and/or the Town Clerk.
3. *Conditions of suspended sentences.* In the event that the court chooses to suspend any portion of the fine or sentence for a violation of this ordinance, the Town shall request that the court make the suspended sentence expressly conditional on the following terms:
 - (a) The defendant must evict, remove, and permanently bar from entering the property any persons who committed the criminal activity forming the basis of the public nuisance, including but not limited to the defendant himself, his or her family members and relatives, and owners, tenants, occupants, guests, and other persons. This may be accomplished through forcible entry and detainer actions, sale of the property, new leases of the property, or other legal action as needed; and
 - (b) The defendant must take steps to abate the public nuisance, eliminate its past and continuing adverse effects on the neighborhood, and prevent public nuisances from recurring on the property, including but not limited to landlord training, tenant background checks and screening, improvements to the property, including general repairs which will bring the property into compliance with, and including fencing, lighting, and destruction of buildings, modifications to leases, security

guards, removal of trash, junk, and graffiti, and compliance with all other applicable Town Codes; and

- (c) Any other conditions the court deems appropriate.
4. *Posting and publication of public nuisance convictions.* Upon the conviction of any person for violating this ordinance, in addition to any fine and/or jail sentence, the Town may file in the office of the County Clerk a certificate describing the real property and that it has been found to be a public nuisance. The Town may also post such notices in prominent places on the real property on which the public nuisance occurred. These notices may be attached to any structure on the real property. The Town shall have the right to enter the real property for the purpose of erecting, affixing, maintaining and removing these notices. The Town may also publish or release notices describing the property and stating that it has been found to be a public nuisance in or to newspapers, periodicals, magazines, fliers and other print media, and may release such notices to television, radio and cable media. The notices and releases may contain the property address, the names of the defendants convicted and all persons holding any legal or equitable interest in the property, photographs of the defendants and all persons holding any legal or equitable interest in the property, photographs of the property and the nuisance activity, a narrative description of the nuisance activity involved, a statement that the property constitutes a public nuisance, the court's sentence including any suspended sentence, and the conditions of the same, and may invite the public to contact the Town regarding any further nuisance activity or violations of the sentence. The Town may post the property and release or publish the notices provided above for a period not exceeding one year from the conviction, or, in the event that the conviction is appealed, one year from the date the conviction is affirmed. It shall be unlawful for any person to interfere with, remove, obliterate, obscure, cover, or destroy any notice posted pursuant to the provisions of this section.
5. *Additional and alternative remedies.* In addition or in the alternative to the criminal fines, sentences, conditions of suspended sentences, publication, posting, press and media releases, and other sanctions provided above, the Town may also seek administrative remedies against any license and the civil remedies provided in this ordinance. These remedies shall be cumulative, and the Town may pursue one or more of them, simultaneously or in succession.

§ 4.5 CIVIL ABATEMENT OF PUBLIC NUISANCE OFFENSES: RESPONSE COST RECOVERY

A. *Intent.* The purpose of this Section 3.5 is not to punish, but to abate public nuisances and to reduce the costs of providing police, fire and other emergency response services by imposing a civil fee against persons responsible for conducting, aiding, allowing, permitting or condoning a public nuisance at a residence or other private property for the recovery of costs associated with providing law enforcement, fire and other emergency response services to public nuisances. The remedial actions provided in this Section are intended to be civil in nature.

B. *Responsibility for Nuisance.*

1. Every owner, occupant, lessee or holder of any possessory interest of a residence or other private property within the Town is required to maintain, manage and supervise the property and all persons thereon in a manner so as not to violate the provisions of this ordinance. The owner of the property remains liable for such violations regardless of any contract or agreement with any third party regarding the property.
2. The responsible person shall not conduct, aid, allow, permit or condone a public nuisance at a residence or other private property.
3. If a responsible person for the nuisance is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for the response costs incurred pursuant to this ordinance.
4. To incur liability for response costs imposed by this ordinance, the responsible person for the nuisance need not be present when the nuisance occurs which results in the response giving rise to the imposition of response costs. This section therefore imposes vicarious as well as direct liability upon a responsible person.

C. *Warning of Response Cost Recovery.*

1. When a law enforcement officer, fire official, other emergency response provider or Code Enforcement Officer makes a response to a nuisance at a residence or other private property within the Town, the official shall inform any responsible person(s) for the nuisance at the scene that:
 - a. The official has determined that a nuisance exists; and
 - b. If more than one response to a nuisance has been made to a residence or other private property within a twelve-month period, responsible person(s) will be charged for the Town's costs of providing the response and for any subsequent responses for nuisance.
2. A warning given pursuant to this subsection shall remain in effect for the residence or other private property at a given address until a full twelve month period has elapsed during which there have been no responses to a nuisance at that residence or other private property.

D. *Recovery of Response Costs.* When a law enforcement officer, fire official, other emergency response provider or Code Enforcement Officer responds to a nuisance at a residence or other private property within the Town within a twelve month period of a warning given pursuant to Section 4.5(C), all responsible persons shall be jointly and severally liable for the Town's costs of providing response and for all subsequent responses during the warning period according to the schedule of cost recovery established by the police department. The cost recovery schedule shall be available at the Town's police department and at the Town clerk's office.

E. *Billing and Collection.*

1. The amount of response costs shall be deemed a debt owed to the Town by the responsible person held liable in Section 4.5(B) for the nuisance and, if a juvenile, by the juvenile's parents or guardians. Notice of the costs for which the responsible person is liable shall be mailed via certified mail within 14 days of the response giving rise to such costs. The notice shall contain the following information:
 - a. The name of the person(s) being held liable for the payment of such costs;
 - b. The address of the residence or other private property where the nuisance occurred;
 - c. The date and time of the response;
 - d. The law enforcement, fire or emergency service provider who responded;
 - e. The date and time of any previous warning given pursuant to Section 3.5(C) and previous responses to nuisances at the residence or other private property in question within the previous twelve months; and
 - f. The recovery cost assessed as set forth in the cost recovery schedule.
2. The responsible person shall remit payment of the noticed response cost to the Town of Estancia within sixty days of the date of the notice.
3. The Town may place a lien upon property where the nuisance occurred for any costs not paid within three (3) months of notice in section 4.5(E)(1), above.

- F. *Reservation of Legal Options.* Nothing in this ordinance shall be construed as a waiver by the Town of Estancia of any right to seek reimbursement for actual costs of response services through other legal remedies or procedures. The procedures provided for in this ordinance are in addition to any other statute, ordinance or law, civil or criminal. This ordinance in no way limits the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by this ordinance.
- G. *Appeals.* Any person upon whom is imposed response costs pursuant to Section 4.5 shall have the right to petition district court for writ of certiorari pursuant to Rule 1-075 NMRA.

§ 4.6 CIVIL ABATEMENT OF PUBLIC NUISANCE OFFENSES: IN REM PROCEEDINGS.

- A. *Intent.* The purpose of this section is not to punish, but to abate public nuisances. The actions provided in this section are designed to abate public nuisances by removing the property and vehicles from criminal use and as a base of criminal operations, to ensure that criminal activity and the use of the property for criminal purposes is unprofitable, to require that the profits of criminal activity be disgorged, to make property owners vigilant in preventing public nuisances on, in, or using their property and responsible for the lawful use of their property by tenants, guests and occupants, and to deter public nuisances. The remedies provided in this section are directed at the property involved without regard to ownership, title or right of possession and the culpability or innocence of those who hold these rights. The remedial actions provided in this section are intended

to be civil in nature. The remedies of seizure, temporary restraining order, closure, receivership, sale, and/or destruction are intended to be in rem, against the property itself, and not against any individual directly. However, the remedies of temporary restraining order, civil judgment, and permanent injunction may be partially in personam.

B. *Procedure in General.*

1. The remedies provided in Section 4.6 of this ordinance are cumulative and supplementary to the criminal penalties provided in Section 4.3 of this ordinance, the criminal remedies provided by any other criminal ordinance or statute, other civil remedies, and any administrative proceedings to revoke, suspend, fine, or take other action against any license. The Town may pursue the remedies provided in Section 4.6 of this ordinance, the criminal penalties provided in Section 4.3 of this ordinance or other ordinances or statutes, other civil actions or remedies, administrative proceedings against a license, or any one or more of them, and may do so simultaneously or in succession.
2. All actions under Section 4.6 are civil and remedial in nature. All seizure, closure, receivership, sale and destruction remedies under Section 4.6 shall be in rem. Injunctive remedies under this section may be partly in personam.
3. The Town Attorney for the Town of Estancia and/or the District Attorney for the County of Tarrant may file a civil action in the District Court for the Seventh Judicial District.
4. Actions under Section 4.6 of this ordinance shall be in accordance with the New Mexico Rules of Civil Procedure and the New Mexico Rules of Evidence.
5. Actions under Section 4.6 of this ordinance may affect the use, possession, enjoyment, and title to real property. Accordingly, the Town may file and record a notice of lis pendens against the real property involved.
6. An action under Section 4.6 of this ordinance shall be commenced by the filing of a verified complaint or a complaint verified by an affidavit and a motion for temporary restraining order in accordance with the New Mexico Rules of Civil Procedure.
7. The defendants to an action under Section 4.6 of this ordinance and the persons liable for the remedies in this section may include the property itself, any persons owning or claiming any legal or equitable interest or right of possession in the property, all tenants and occupants at the property, managers and agents for any persons owning or claiming a legal or equitable interest in the property, any persons committing, conducting, promoting, facilitating or aiding the commission of or flight from a public nuisance, and any other persons whose involvement may be necessary to abate the nuisance, prevent it from recurring, or to carry into effect the court's orders for temporary restraining orders, seizures, closures, receiversships, permanent injunctions, liens, sales and destruction. Any person holding any legal or equitable interest or right of possession in the property who has not been named as a defendant may intervene as a defendant.

8. Notification before filing civil action.
 - a. At least ten (10) calendar days before filing a civil action under this ordinance involving any seizure, closure, or receivership of real property, the Code Enforcement Officer shall post a notice at the main entrances to the buildings or at some other prominent place on the real property. The Code Enforcement Officer shall also mail a notice by certified mail, return receipt requested, to the owner(s) of the real property and to the holder(s) of the last deed of trust recorded on the real property. The mailing of the notice shall be deemed sufficient if mailed to the owner(s) and the holder(s) of the last recorded deed of trust at the address(es) shown on the records of the Torrance County Clerk and/or the Torrance County Assessor's Office. The posted and mailed notices shall state that the real property has been identified as a public nuisance and that a civil action under this ordinance may be filed.
 - b. The Code Enforcement Officer is authorized to enter upon property for the purpose of posting notice and to affix the notice in any reasonable manner to any buildings and structures.
 - c. The Code Enforcement Officer shall not be required to post or mail any notice specified in Subsection (B)(8)(ii) whenever he or she determines, in his or her sole discretion, that any of the following conditions exist:
 - i. The public nuisance poses a threat to public safety; or
 - ii. Notice could jeopardize a pending investigation of criminal or public nuisance activity, confidential informants, or other police activity; or
 - iii. Notice could result in sale, transfer, encumbrancing or destruction of the property; or
 - iv. Other emergency circumstances exist; or
 - v. The owner(s) and the holder(s) of the last recorded deed of trust have been notified in writing within the last 120 days that the property has been identified as a public nuisance and that a civil action under this ordinance may be filed.
 - d. It shall be unlawful for any person other than the Code Enforcement Officer to remove any notice posted under the provisions of this subsection.
9. Whenever a civil action is filed pursuant to § 4.6(B) that involves a building occupied by a resident the following shall apply. A notice in substantially the following form shall be served on those residents known by name to the Mayor. Such notice shall be served by personal service or by mailing a copy of such notice by certified mail, postage prepaid, return receipt requested. As to residents unknown by name to the Mayor, service may be accomplished by posting such notice at the main entrances or

at some other prominent place on or within the residential building. The notice shall be written in both English and Spanish.

NOTICE TO RESIDENTS
YOU MAY BE REQUIRED TO MOVE

The Town believes there may be health and/or safety problems with the building where you live. The Town has filed a lawsuit asking that the building where you live be closed. The Court may order the building to be closed.

C. *Seizure of Certain Vehicles and Other Personal Property Before Filing Complaint.*

1. Seizure of vehicles and other personal property on an ex parte basis and before filing may be necessary to prevent the removal, destruction or concealment of vehicles and other personal property to thwart the remedies provided in this ordinance.
2. If the Code Enforcement Officer or any police officer determines that there is probable cause to believe that:
 - a. A public nuisance as defined in Section 4.1 of this ordinance has occurred; and
 - b. The public nuisance occurred in a vehicle, or a vehicle or other personal property was used to commit, conduct, promote, facilitate or aid the commission of or flight from the public nuisance; and
 - c. The vehicle or other personal property is capable of being concealed, destroyed, or removed from the Town of Estancia and the County of Torrance; then the Code Enforcement Officer or any police officer may seize and impound the vehicle or other personal property as a public nuisance.
3. In any case in which a vehicle or other personal property is seized as provided in Subsection (A) above, the police officer or Code Enforcement Officer shall report the seizure to the Town Attorney within five (5) days of said seizure. Within 30 days of the date the seizure is reported to the Town Attorney, the Town Attorney shall either declare the vehicle or other personal property available for release, declare the vehicle or other personal property to be contraband, declare the vehicle or other personal property to be relevant evidence in a criminal proceeding, or file an action under this ordinance seeking closure of the vehicle or other personal property. The declarations provided above shall be in writing and shall be made available as public record at the office of the Code Enforcement Officer.
4. Any person claiming any legal or equitable interest or right of possession in any vehicle or other personal property seized under this Section may file a motion in the civil action filed under this Section 4.6 for return of the seized property. The motion shall be filed, set, served, heard and determined as provided in the New Mexico Rules of Civil Procedure.

D. *Temporary Restraining Orders in General.*

1. *Intent.* Public nuisances are a real, direct and immediate threat to the health, safety, and welfare of the people of Estancia. Public nuisances cause immediate and irreparable injury, damages and losses to the citizens of Estancia and their governmental agencies. Actions at law are not always an adequate remedy, and the protection of public health, safety, and welfare may require the temporary restraining orders provided in this section. Ex parte temporary restraining orders are necessary to provide rapid relief from public nuisances without the delay entailed by an adversarial hearing and personal service and to prevent persons from removing, concealing, destroying, encumbering, selling or transferring property that may be the subject of the remedies in this ordinance. The issuance and execution of temporary restraining orders under Section 4.6 of this ordinance shall not be deemed a bailment of property. The owner(s) of the property remains responsible for the maintenance and security of property subject to temporary restraining orders and shall be permitted reasonable access to the property for these purposes upon application to the court.
2. *Form of proposed temporary restraining order.* Every temporary restraining order proposed by the Town under Section 4.6 of this ordinance shall set forth the reason for its issuance, be reasonably specific in its terms, and describe in reasonable detail the acts and conditions authorized, required or prohibited, and shall be in accordance with the New Mexico Rules of Civil Procedure.

E. *Temporary Restraining Orders; Public Nuisances.*

1. Seizure of vehicles and other personal property not within buildings, and restraining orders to persons concerning real property, vehicles, other personal property and public nuisances. The Town shall petition the court to issue a temporary restraining order that makes the following orders for seizure of vehicles and other personal property not contained within buildings and restraining persons as to real property, vehicles, other personal property, and public nuisances, which orders shall be served and become effective pursuant to the New Mexico Rules of Civil Procedure:
 - a. The Code Enforcement Officer or any police officer to seize and close vehicles and other personal property not contained within any building on real property, using any reasonable force necessary, and to place the same in police custody, or to retain the same in police custody if previously seized, in the constructive custody of the court, until further order of the court. All towing and storage costs shall be paid by the owner(s) of the vehicle or other personal property.
 - b. Persons to deposit with the Code Enforcement Officer or any police Officer documents evidencing title, registration and keys, combination numbers, magnetic cards and other devices for accessing the vehicles and other personal property.
 - c. The Code Enforcement Officer or any police officer or sheriff's deputy to post the summons, complaint, and temporary restraining order on the real property and to

serve copies upon any person who reasonably appears or claims to hold any legal or equitable interest or right of possession in the property.

- d. To restrain all persons from removing, concealing, damaging, destroying, or selling, giving away, encumbering or transferring any interest in vehicles, other personal property, fixtures, structures, or real property, or the contents of the same, or using any of the property as security for a bond.
 - e. Persons holding any legal or equitable interest or right of possession in the real property, vehicle, or other personal property to take steps to abate the public nuisance and prevent it from recurring.
 - f. The Code Enforcement Officer or any police officer to take reasonable steps to abate the nuisance activity and prevent it from recurring.
 - g. To require certain named individuals to stay at least 200 yards away from the property at all times.
 - h. Any other orders that may be reasonably necessary to take the property into the court's constructive custody and to access and safeguard the property.
2. Seizure of real property and vehicles and other personal property within buildings. In addition to the orders above, the city shall petition the court to include in the temporary restraining order the following orders with respect to the seizure of real property and the contents of buildings, which orders shall be served and become effective pursuant to the New Mexico Rules of Civil Procedure:
- a. The Code Enforcement Officer or any police officer to enter upon, seize, and close the real property, and buildings and structures upon the real property and the contents of the same, using any reasonable force necessary.
 - b. Persons holding any legal or equitable interest or right of possession in the real property or personal property to deposit with the Code Enforcement Officer or any police officer documents evidencing title, registration and keys, combination numbers, magnetic cards and other devices and information for accessing the real property and any buildings, structures, vehicles and other personal property contained thereon until further order of the court.
 - c. Persons holding any legal or equitable interest or right of possession in the real property to provide for the maintenance, utilities, insurance and security of the property. The city shall petition the court to permit these persons reasonable access to perform these duties or, at the discretion of the City Attorney, to permit the Code Enforcement Officer to perform these duties in lieu of the owners. If the Code Enforcement Officer chooses to perform the duties, the owner(s) shall be responsible for all costs incurred.

- d. Where real property involved contains three or more apartments or other individualized rental units, the city may petition the court to order in lieu of closure, but in addition to the other orders provided above, that certain named individuals who committed, conducted, promoted, facilitated or aided the commission of a public nuisance be removed from the property, but that other persons lawfully on the premises be permitted to remain, and the property be placed in a special receivership as provided in this subsection. The Town shall request that a receiver appointed ex parte by the court take possession of the property to the exclusion of the owners and other persons holding any legal or equitable interest and their managers and agents then in possession, collect rents from the tenants, and pay the operating expenses, taxes, utilities, and maintenance expenses on the property including the cost of abating public nuisances and preventing the same from recurring. The receiver shall not pay the principal or interest on any note, deed of trust, mortgage, installment land contract or similar instrument, and these obligations shall remain in the real property. The Town shall petition the court to periodically award the receiver reasonable fees for his or her services to be paid out of the rents, profits, and income. The receiver should account for all income and expenses in accordance with the laws of New Mexico. The city shall petition the court to order the defendants to pay the fees and expenses of the receiver, utilities, maintenance, security, operating expenses, taxes, insurance and other reasonable expenses related to the property to the extent that the rents, income, and profits of the property are insufficient to defray the same. The receiver appointed ex parte shall not be replaced except upon the stipulation of all parties. The Town may petition the court to make other reasonable orders consistent with these provisions for the administration of this special receivership.
 - e. Any other orders that may be reasonably necessary to access, maintain, and safeguard the property.
- F. *Motion to Vacate or Modify Temporary Restraining Order or for Return of Seized Property.* Any defendant or any person holding any legal or equitable interest or right of possession in any property seized or restrained under this ordinance may file a motion to vacate or modify the temporary restraining order or for return of seized property. Proceedings on these motions shall be in accordance with the New Mexico Rules of Civil Procedure and applicable laws.
- G. *Remedies for Public Nuisances.* Where the existence of a public nuisance is established in a civil action under Section 4.6 of this ordinance, the Town shall petition the court to enter permanent prohibitory and mandatory injunctions requiring the defendant to abate the public nuisance and take specific steps to prevent the same and other public nuisances from occurring on the real property, in the vehicle, or using the real property, vehicle or other personal property. The permanent prohibitory and mandatory injunction requested by the Town may allow the court to consider other remedies as necessary and provided by law to abate the public nuisance. The Town shall also petition the court to order, as to any real property, vehicle or other personal property used to commit, conduct, promote,

facilitate or aid the commission of or flight from any public nuisance, the following remedies:

1. *Closure of real property and destruction of certain structures.* That the real property be closed for a period of not less than one year and not more than three years from the date of the final judgment, plus any extension of that period caused by failure to comply with the conditions for release of the property set out below, and if the Town requests, that certain structures upon the real property be destroyed. The Town may request the court to order the defendants to carry out the destruction of the structures. The Town shall petition the court to order the defendants to provide for the maintenance, utilities, insurance, and security of the property during the period of closure, and that at the end of the closure period, the real property be released to the owner only upon (a) payment of all expenses incurred by the Town for seizure, closure, utilities, security, access, destruction of buildings, maintenance, insurance, and other reasonable expenses; and (b) payment of all civil judgments under Section 4.6; and (c) execution by all owners and other persons holding any legal or equitable interest or right of possession in the real property of a complete and unconditional release of the Town and all of its employees and agents for liability for the seizure, closure and damages to the property.

In the event that the owners and other persons holding any legal and equitable interest and rights of possession, or any of them, fail, neglect or refuse to pay the fees, expenses, and judgments, or to execute the release provided above, the property shall remain closed. However, if a year expires without the owner making payment, the property shall then forfeit to the Town. The issuance and execution of the closure order shall not be deemed a bailment of property. The owner of the property remains responsible for the maintenance and security of property subject to the closure order and shall be permitted reasonable access to the property for these purposes upon application to the court.

2. *Receivership of real property and destruction of certain structures.* That, when the Town so requests, in lieu of closure of real property, the real property be placed into a special receivership for a period not less than one year and not more than three years from the date of final judgment, plus any extension of that period caused by a failure to comply with the conditions for release of the property set out below, and, if the city requests, that certain structures be destroyed. The Town may request the court to order the defendants to carry out the destruction. The Town shall petition the court to order the defendants to provide for and pay the maintenance, utilities, security, operating expenses, taxes, insurance, receivership fees, and other reasonable expenses related to the property to the extent that the rents, profits, and income of the property under receivership is insufficient to defray these expenses, and that at the end of the receivership period, the real property shall be released to the owner only upon (a) payment of all expenses incurred by the Town for seizure, closure, utilities, security, access, maintenance, insurance, taxes, receivership and receivership fees, the costs of destroying structures, and other reasonable expenses not covered by the rents, profits, and income under receivership; and (b) payment of all civil judgments under Section 4.6; and (c) execution by all owners and other persons holding any legal or equitable

interest or right of possession in the real property of a complete and unconditional release of the Town and all of its employees and agents, including the receiver, for any liability for the seizure, closure and receivership and damages to the property.

In the event that the owners and other persons holding any legal or equitable interest or right of possession in the real property, or any of them, fail, neglect or refuse to pay the fees, expenses, and judgments, or to execute the release provided above, the property shall remain under the receivership or be closed as provided in Subsection (1) above. The issuance and execution of the receivership order shall not be deemed a bailment of property. The owners of the property remain responsible for the maintenance and security of the property subject to the receivership order and shall be permitted reasonable access to the property for these purposes upon application to the court. In the event that the income, rents and profits of the receivership, after a complete accounting, exceed the costs and expenses of access, seizure, closure, maintenance, security, taxes, insurance, destruction of structures, the receivership and receivership fees, and all other reasonable expenses related to the property, the city shall petition the court to order the receiver to expend the remainder first on specific improvements at the property that will abate public nuisances or prevent them from recurring, and second, to pay the civil judgments due in the case.

3. *Impoundment of vehicles.* That the vehicle be impounded for a period of not less than six months and not more than one year from the date of the final judgment plus any extension of the period caused by a failure to comply with the conditions for release of the vehicle set out below; and that at the end of the closure period, the vehicle shall be released to the owners only upon: (a) payment of all towing fees, storage fees, and civil judgments under Section 4.6; and (b) execution by the owners and lienors of a complete and unconditional release of the Town and all of its employees and agents for the closure and any and all damages to said vehicle.

In the event that the owners, lienors, or any of them fail, neglect or refuse to pay the fees, expenses, and judgments when due, and execute the release provided above, the vehicle shall be forfeited to the Town. The issuance and execution of the closure order shall not be deemed a bailment of property.

4. *Destruction of vehicles.* Where the Town so requests, in lieu of impoundment of the vehicle, that the vehicle be destroyed.
5. *Forfeiture of personal property.* That the personal property be forfeited to the Town.

- H. *Judgment for Costs and Attorneys' Fees.* In any case in which a public nuisance is established, in addition to the remedies provided above, the Town may petition the court for a separate civil judgment for the Town's costs and attorneys' fees against every person who committed, conducted, promoted, facilitated, or aided the commission of any public nuisance or who held any legal or equitable interest or right of possession in any real property or vehicle on or in which any public nuisance occurred, or any real property, vehicle or other personal property used to commit, conduct, promote, facilitate or aid the commission of any public nuisance. This civil judgment shall be for the

purpose of compensating the city for its costs from pursuing the remedies under Section 4.6 of this ordinance.

- I. *Supplementary Remedies for Public Nuisances.* In any action in which probable cause for the existence of a public nuisance is established, in the event that the defendants, or any one of them, fails, neglects or refuses to comply with the court's temporary restraining orders, receiverships, closures, destruction orders, and other orders, the Town may petition the court to, in addition to or in the alternative to the remedy of contempt, permit the Town to enter upon the real property, vehicle or other personal property, and abate the nuisance, take steps to prevent public nuisances from occurring, and/or perform other acts required of the defendants in the court's temporary restraining orders and other orders.
- J. *Lien for Judgments.* In addition to the remedies provided in Section 4.6 of this ordinance, the Town shall have a lien against the real property, vehicles and other personal property on or in which any public nuisance occurred or which was used to commit, conduct, promote, facilitate, or aid in the commission of any public nuisance for the total of all judgments imposed for costs and attorneys' fees. The Town may record a statement of this lien with the County Clerk.
- K. *Stipulated Alternative Remedies.*
 1. The Town and any defendants to an action under Section 3.6 of this ordinance may voluntarily stipulate to temporary restraining orders, seizures, closures, receiverships, forfeitures, destruction, judgments, liens, and other remedies, temporary or permanent, that are different or altered from those provided in Section 3.6 of this ordinance, including but not limited to the following:
 - a. Shorter or less stringent temporary restraining orders, closures and receiverships.
 - b. Receiverships on other terms, including but not limited to terms providing for the payment of secured indebtedness on the subject property, removal or substitution of the receiver, and other terms.
 - c. Nondestruction of buildings, other structures, vehicles and other personal property.
 - d. Release of seized real property to the party currently entitled to possession, or to an agent, manager, or receiver appointed under the stipulation, after the public nuisance has been fully abated, steps have been taken to prevent public nuisances from recurring, sufficient action has been taken to deter public nuisances, and the public interest is protected, or a suitable plan to accomplish these goals has been agreed to.
 - e. Reduction or waiver of civil judgments and liens.

f. Other reasonable stipulations designed to abate the public nuisance, prevent public nuisances from recurring, deter public nuisance activity, and protect the public interest.

2. Any stipulations for alternative remedies shall be made by an order of the court.

L. *Other Seizures, Closures, Forfeitures and Confiscations.* Nothing in Section 4.6 of this ordinance shall be construed to limit or forbid the seizure, confiscation, closure, destruction or forfeiture of property now or hereafter required, authorized or permitted by any other provision of law. Nothing in this ordinance shall be construed as requiring that evidence and property seized, confiscated, closed, forfeited or destroyed under other provisions of law be subjected to the remedies and procedures provided in this ordinance

SECTION 5. EFFECTIVE DATE AND TIME FOR COMPLIANCE

This ordinance shall become effective immediately upon passage and signing, pursuant to NMSA 1978, § 3-17-5. The enforcement of the provisions of this ordinance will be delayed for thirty (30) days from the effective date in order to provide the citizens of Estancia the opportunity to bring any existing violations of this ordinance to compliance.

PASSED, APPROVED AND ADOPTED ON THIS _____ DAY OF _____, 2012.

Theodore Barela, Mayor
Town of Estancia

ATTEST:

Julie Carter, Town Clerk