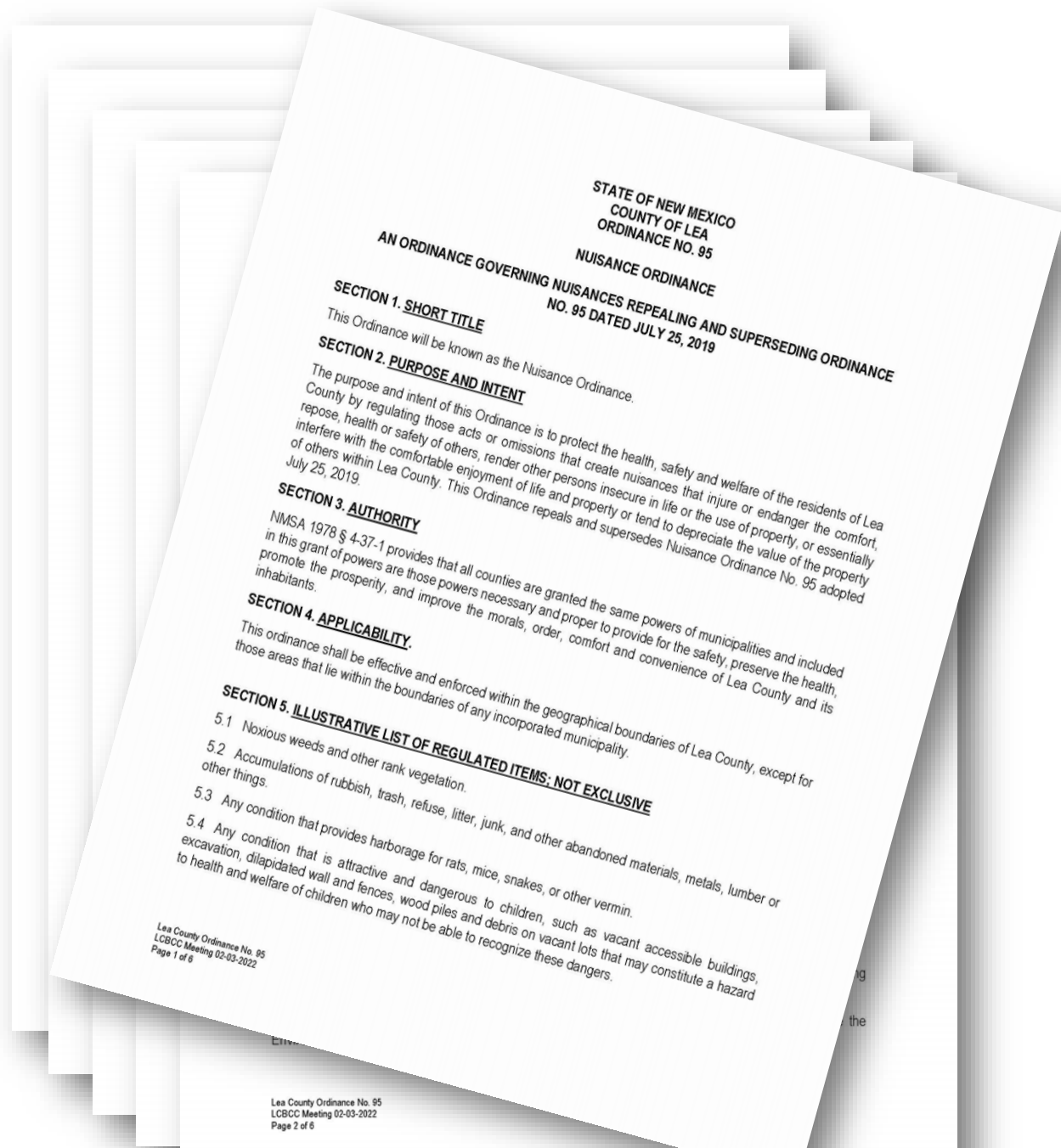




Consideration to Adopt Lea County Ordinance No. 95 An Ordinance Governing Nuisances Repealing and Superseding Ordinance No. 95 Dated July 25, 2019





**LEA COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY FORM**

LCBCC Meeting Date: Thursday, February 3, 2022

Submit this summary form & all attachments to the Finance Director clow@leacounty.net & cc the Executive Coordinator sstout@leacounty.net by: **Monday, January 24, 2022**

County Manager Approval mgallagher@leacounty.net required for all time sensitive issues that do not meet the above deadline.

| | | |
|--|--|---|
| DATE SUBMITTED mm-dd-yyyy: 01/25/2022 | SUBMITTED BY Name, Title, Dept: John Caldwell, County Attorney, Legal Department | |
| SUBJECT: Hearing: Nuisance Ordinance No. 95, Repealing and Superseding Ordinance No. 95 Dated July 25, 2019 | ATTACHMENT(S): Proposed Nuisance Ordinance No. 95 | |
| NO. OF ORIGINALS FOR SIGNATURE: 1 Ordinance | ACTION REQUESTED: Action Item | |
| BUDGET LINE ITEM NUMBER: | FISCAL BUDGET YEAR: | |
| STRATEGIC PLAN Implementation of 5 Year Strategic Plan: 3.4 Quality of Life | | |
| SUMMARY: The proposed ordinance repeals and supersedes the current nuisance ordinance. The most significant difference is applicability. The current ordinance applies only to the Lea County/Hobbs Extra-Territorial Area. The new nuisance ordinance will apply to all Lea County, except those areas that lie within incorporated municipal boundaries. | | |
| Requested Items Needed for Presentation Easels/Laptop/Projector/Etc.: Easel <input type="checkbox"/> Laptop <input checked="" type="checkbox"/> Projector <input checked="" type="checkbox"/> Other: _____ <small>If checked, how many:</small> | See Additional Summary Attached <input type="checkbox"/> | |
| SUBMITTER'S RECOMMENDATION(S): | Submitter's Signature Department Director, Etc. John Caldwell <small>Digitally signed by John Caldwell Date: 2022.01.25 13:57:25 -07'00'</small> | |
| FINANCE REVIEW Fiscal Impact/Cost: | Reviewed by Finance Director | |
| LEGAL REVIEW: (Note: Travel does not need legal review) | Reviewed by County Attorney John Caldwell <small>Digitally signed by John Caldwell Date: 2022.01.25 13:57:37 -07'00'</small> | |
| COUNTY MANAGER REVIEW: | Approved by County Manager to be Placed on Agenda | |
| Item No. <u>0301</u> RECORDING SECRETARY'S USE ONLY ~ COMMISSION ACTION TAKEN | | |
| Approved: _____ | Denied: _____ | Other: _____ |
| Resolution No. _____ | Policy No. _____ | Ordinance No. <u>95</u> |
| Continued To: _____ | Referred To: _____ | Comments: <u>Repeals & Supersedes</u> <u>Ordinance No. 95</u> <u>Date July 25, 2019</u> |

STATE OF NEW MEXICO
COUNTY OF LEA
ORDINANCE NO. 95

NUISANCE ORDINANCE

AN ORDINANCE GOVERNING NUISANCES REPEALING AND SUPERSEDING ORDINANCE
NO. 95 DATED JULY 25, 2019

SECTION 1. SHORT TITLE

This Ordinance will be known as the Nuisance Ordinance.

SECTION 2. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to protect the health, safety and welfare of the residents of Lea County by regulating those acts or omissions that create nuisances that injure or endanger the comfort, repose, health or safety of others, render other persons insecure in life or the use of property, or essentially interfere with the comfortable enjoyment of life and property or tend to depreciate the value of the property of others within Lea County. This Ordinance repeals and supersedes Nuisance Ordinance No. 95 adopted July 25, 2019.

SECTION 3. AUTHORITY

NMSA 1978 § 4-37-1 provides that all counties are granted the same powers of municipalities and included in this grant of powers are those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort and convenience of Lea County and its inhabitants.

SECTION 4. APPLICABILITY

This ordinance shall be effective and enforced within the geographical boundaries of Lea County, except for those areas that lie within the boundaries of any incorporated municipality.

SECTION 5. ILLUSTRATIVE LIST OF REGULATED ITEMS; NOT EXCLUSIVE

- 5.1 Noxious weeds and other rank vegetation.
- 5.2 Accumulations of rubbish, trash, refuse, litter, junk, and other abandoned materials, metals, lumber or other things.
- 5.3 Any condition that provides harborage for rats, mice, snakes, or other vermin.
- 5.4 Any condition that is attractive and dangerous to children, such as vacant accessible buildings, excavation, dilapidated wall and fences, wood piles and debris on vacant lots that may constitute a hazard to health and welfare of children who may not be able to recognize these dangers.

5.5 All disagreeable or obnoxious odors and stenches, as well as the conditions, substances, or causes that give rise to the emission or generation of such odors or stenches.

5.6 The carcasses of animals not disposed of within three days or when the carcasses become a nuisance, whichever occurs first.

5.7 Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.

5.8 Dense smoke, noxious fume, gas, soot or cinders, in unreasonable quantities.

5.9 Inoperable motor vehicles.

5.10 The above list is for illustrative purposes and is not an exhaustive list of those acts, omissions, or items that may constitute a nuisance.

SECTION 6. PROHIBITED

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

SECTION 7. NOTICE TO ABATE

7.1 Whenever a nuisance is found to exist, the County Manager or some other duly designated officer of the County may issue a citation that shall include a written notice to abate the nuisance to the owner, the owner's agent, or occupant of the property upon which such nuisance exists or upon the person causing or maintaining the nuisance.

7.2 Contents of notice

The notice to abate a nuisance shall contain the following:

7.2.1 An order to abate the nuisance within a specified amount of time, which shall be reasonable under the circumstances but generally no more than seven days.

7.2.2 The location of the nuisance, if the nuisance is stationary.

7.2.3 A description of what constitutes the nuisance.

7.2.4 A statement of the acts necessary to abate the nuisance.

7.2.5 A statement advising the person allegedly committing the nuisance of the right to request a hearing before the Environmental Board if a hearing has not already been provided. The request for a hearing must be received by the County Manager no later than seven days after receipt of the citation and notice.

7.2.6 A statement that if the nuisance is not abated as directed and request for a hearing is not made within the prescribed time, the County will seek relief from the magistrate court.

7.3 Any person receiving a notice of an order to abate a nuisance may request a hearing before the Environmental Board within the relevant notice period specified in Section 7.2.1.

7.4 **Service of notice.** The citation with notice shall be served by first class mail and certified mail or may be personally handed to a person, 18 years or older, at the address where the nuisance is located.

SECTION 8. ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE VEHICLES

8.1 **Definitions.** The following words, terms, phrases, when used in this ordinance, shall have the meanings ascribed to them in this ordinance, except where the context clearly indicates a different meaning.

8.1.1 **Abandoned** means any motor vehicle that does not display a current license plate or valid police sticker and is left unattended for a period exceeding 72 consecutive hours.

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

8.1.3 **Inoperable** means any motor vehicle incapable of operation upon any street or highway in compliance with the laws of the State of New Mexico.

8.1.4 **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, golf carts, recreational vehicles, and motor homes.

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

8.1.6 **Public property** means any street, alleyway, right-of-way, parkway, 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.

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

SECTION 9. 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 for more than 10 days. 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 ordinance. This section shall not apply to:

9.1 Any vehicle within an enclosed area or out of public view behind a solid fence; or

9.2 Any person who has obtained a permit for restoration of a motor vehicle pursuant to the County's policy on permits for restoration of motor vehicles.

SECTION 10. PERMITS FOR RESTORATION OF MOTOR VEHICLES

Any person, upon payment of a fee of \$25.00 for each 90-day period or portion thereof, may obtain a permit for the restoration of a motor vehicle from the Lea County Environmental 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.

SECTION 11. NOTICE TO REMOVE

Whenever it comes to the attention of the County that any violation of Section 9 may exist, notice in writing shall be served upon the occupant of the land where the motor vehicle 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 Ordinance.

11.1 Notice procedure. Under this section 11, the County 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 three 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 certified 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.

SECTION 12. REQUEST FOR HEARING/APPEAL

12.1 Hearing. Under this ordinance, the persons to whom the notices or citations are directed or their duly authorized agents may file a written request for hearing before the Environmental Board. The request shall be delivered to the County Manager no later than seven days after receiving the citation and notice to abate the nuisance.

12.2 Appeal to Board of County Commissioners. If a person feels aggrieved by the decision of the Environmental Board, the person may appeal the decision to the Board of County Commissioners (BOCC) by serving the County Manager with a written notice of appeal no later than seven days after the decision of the Environmental Board.

12.3 Appeal to Magistrate Court. If a person feels aggrieved by the decision of the Board of County Commissioners, the person may appeal the decision by filing suit in the Lea County Magistrate Court no later than the 30th day after the decision of the Board of County Commissioners.

SECTION 13. PENALTIES AND ADDITIONAL REMEDIES

Any person found to be in violation of this ordinance is subject, in addition to the duty to abate the nuisance, to the penalties as follows:

13.1 Upon the first or second violation of this ordinance, except as provided below in 13.6 and 13.7, the offender shall be sentenced to a fine of not less than \$100 nor more than \$300. The minimum fine of \$100 may not be suspended, deferred or taken under advisement. The court may, in its discretion, suspend the remainder of the fine.

13.2 Upon the third or subsequent violation of this ordinance, except as provided below in 13.6 and 13.7, the offender shall be sentenced to a fine of not less than \$300, which may not be suspended, deferred or taken under advisement.

13.3 Any person found to be in violation of this ordinance shall not be subject to a term of imprisonment.

13.4 Where the complaint alleges a violation of this ordinance, any plea of guilty or nolo contendere thereafter entered in satisfaction of the charges shall include at least a plea of guilty or nolo contendere to a violation of this ordinance and no other disposition by plea of guilty or nolo contendere to any other charge shall be authorized.

13.5 As an additional remedy to the penalties set forth in this ordinance, the violation of any provision of this ordinance may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

13.6 If the violation is for discarding or disposing of refuse, litter, or garbage on public or private property in any manner other than by disposing of it in an authorized landfill, the fine may be up to \$1,000.00 for any such violation.

13.7. If the violation is for the improper or illegal disposal of hazardous materials or waste in any manner other than as provided for in the Hazardous Waste Act, the fine may be up to \$5,000.00.

13.8 Prosecution of violations under this ordinance may be commenced by the issuance of a citation charging the violation and may be issued by code enforcement officer of the county or employees authorized by the BOCC to issue such citations.

PASSED, APPROVED and ADOPTED on this 3rd day of February, 2022 by the Lea County Board of County Commissioners in an open meeting in Lovington, New Mexico.

LEA COUNTY BOARD OF COUNTY COMMISSIONERS

Dean Jackson (District 1), Chair
Voted: Yes No Abstain

Gary G. Eidson (District 3), Vice Chair
Voted: Yes No Abstain

Rebecca Long (District 2), Member
Voted: Yes No Abstain

Jonathan Sena (District 4), Member
Voted: Yes No Abstain

Pat Sims (District 5), Member
Voted: Yes No Abstain

ATTEST: Keith Manes
Lea County Clerk

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:**

By:

Teri Davis, Deputy Clerk

John W. Caldwell, County Attorney