

City of Rio Communities, New Mexico

CHAPTER 13 PUBLIC PEACE, MORALS AND VICE

ARTICLE 3 NUISANCES

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13-3-1 PUBLIC NUISANCE PROHIBITED

It is unlawful to commit a public nuisance. A public nuisance is knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority that is either injurious to public health, safety, morals or welfare or interferes with the exercise and enjoyment of public rights including the right to use public property.

13-3-2 DESIGNATED NUISANCES

In the interest of public health and wellbeing, it is necessary to prohibit the accumulation of waste, refuse and junk, excessive overgrowth of weeds; remove the blight of graffiti and restrict noise that disturbs the peace and quiet of our neighborhoods. Therefore, for the benefit of all residents residing within the corporate limits of the City, the following acts shall be declared public nuisances:

13-3-3 REFUSE AND WASTE

A. Unoccupied Premises

It is unlawful for any reason for any person to sweep, place or throw solid waste or other waste materials in or upon any sidewalk, street, alley or unoccupied premises.

B. Unsanitary Premises

1. It is unlawful for any person to permit or cause to remain in or about his premises any solid waste, weeds, motor vehicles not in operating condition, waste water or any conglomeration of residue that emits odors or serves as a feeding or breeding ground for flies, insects or rodents and as determined by the City, is unsanitary or injurious to public health.
2. The accumulation of building materials, pipes, lumber or boxes may be maintained on the premises if the accumulation is evenly piled and stacked for a reasonable length of time to be determined by the City's enforcement officer.

C. Hazardous Premises

It is unlawful for any person to permit in or about his premises the accumulation of weeds, briars, brush or any other solid waste to become in any way hazardous or injurious to public health or to obstruct pedestrian and vehicular traffic.

D. Solid Waste

1. It is unlawful for any person to allow any solid waste to accumulate upon their premises, whether owned, leased, rented or occupied, during intervals between collection of trash or waste except in the manner as provided in this Article.
2. It is unlawful to deposit any solid waste in or upon any street, alley, sidewalk, gutter, curbing, storm sewer, parkway or vacant lot within the City except in the manner and in a receptacle or container as provided in Subsection E of this Section.

E. Solid Waste Receptacles

All solid waste receptacles shall be maintained in a clean and sanitary condition by the owner or person using the receptacle. All solid waste receptacles shall be located only in places that shall be readily accessible for removing and emptying but shall not be placed or positioned in such a manner that may constitute and cause a nuisance or obstruction to vehicular or pedestrian traffic.

F. Outdoor Vehicle Storage: Prohibited Acts and Exceptions

1. Definitions

For the purpose of this Section, the following meanings shall apply:

- a. "Dismantled or partially dismantled vehicle" means any motor vehicle from which some part or parts that are ordinarily a component of the motor vehicle that have been removed or are missing.
- b. "Inoperative, or inoperative motor vehicle" means any motor vehicle that by reason of dismantling, disrepair, or damage that causes or renders the vehicle incapable of being propelled or operated under its own power, or is in violation of the New Mexico Uniform Traffic Ordinances, Codes or Statutes, or because of lack of insurance and registration, is not legal for public roadway use.
- c. "Motor vehicle" means any wheeled vehicle that is self-propelled or intended to be self-propelled.

2. Prohibited Act

It is unlawful for any person, business, firm or corporation 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 City 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 are kept in a completely enclosed garage or structure.

3. Exceptions

Any person, being owner or tenant, may store, permit to be stored or allow to remain upon their premises, any dismantled, partially dismantled or inoperative motor vehicle or parts, for a period not to exceed one (1) week if such motor vehicle is registered in their name and provided the owner or tenant may, in the event of hardship, secure permission from the City for an extension of time beyond the stated one (1) week time limit.

4. This section shall be construed as being supplementary to any Sections in this code that relates to rubbish, litter or refuse and shall not be construed to permit the parking or placing of dismantled, partially dismantled or inoperable motor vehicles on any public street or thoroughfare.

13-3-4 ILLEGAL DUMPING

A. Authority

Illegal dumping is the disposal of trash, scrap tires or any solid waste in a manner that violates the Solid Waste Act (Chapter 74, Article 9, § § 1 through 42 and 72 and 73 NMSA 1978) or the Recycling and Illegal Dumping Act.

B. Illegal Dumping

It shall be unlawful to dispose of solid waste in any manner other than as specified in Article 13-3-3 of this code.

1. It shall be unlawful for any person to place or dump solid waste or debris on any property within the City whether owned by the person or not.
2. Vacant lots or lands that have been the subject of repeated dumping may be secured to prevent future occurrences of dumping. Methods of securing vacant lots or lands must be approved and may include permanent fencing, ditch or berm or placement of four-foot high posts at four-foot intervals. Signs stating "No Dumping" shall be erected in accordance with applicable ordinances on vacant lands that have been subject to dumping on more than one occasion.
3. It shall be unlawful for any person to place or dump solid waste or debris in any arroyo, stream bed, drainage ditch, public fountain or any public body of water within the boundaries of the City.

C. Presumption of violation

Whenever any litter is discovered to contain any article or articles, including but not limited to letters, bills, publications or other writings that display the name of a person thereon in such a manner as to indicate that the article belongs or belonged to such person, it shall be a rebuttable presumption that such person has violated this subsection.

D. Penalties

Offenders shall be prosecuted and may be fined up to \$500 or forfeit their vehicle or forfeit their business license or perform community service.

13-3-5 WEED CONTROL AND NATIVE PLANTS

A. Purpose

Weed Control, specifically, controlling the infestation of non-indigenous (noxious) weeds is critical to reducing fire danger, maintaining a balanced ecosystem for native plants and animals and reducing soil erosion, soil salinity, contaminates to ground water and the severe effects of flooding. At the very least, the uncontrolled infestation of "weeds" on residential and public properties is an eyesore and at worst, a financial burden to the City if not properly controlled and maintained.

B. Goal

It shall be the goal of the City of Rio Communities to develop and institute an Integrated Weed Management System (IWMS) that promotes the cultivation of native free-flowing native plants and forbs while controlling and mitigating the effects of invasive and noxious plants that are unsightly, damaging and hazardous to our ecology and public health.

C. Authority

Authority is granted pursuant to the Noxious Weed Control Act, NMSA 1978, § § 76-7-1 through 30.

D. Definitions

For the purpose of this Section, the following meanings shall apply:

“Forb” means any broad-leaved herbaceous plant that is not a grass, especially one that grows in a prairie or meadow.

“Highly-flammable” plant means a plant species that has characteristics that make it more volatile by encouraging easy ignition and the spread of fire through its foliage due to low moisture content, dense dry leaves, needles, grass-like leaves, or volatile resins and oils.

“Indigenous Plants” means those species of plants naturally occurring within a specific habitat or bio-geographical region prior to significant human impacts.

“Invasive Noxious Plant” means a plant reproducing outside its native range and outside cultivation that disrupts naturally occurring native plant communities by altering structure, composition, natural processes or habitat quality.

“Native Plant” means those species of plants occurring within the city boundaries prior to European contact, according to best scientific and historical documentation. More specifically, it includes those species understood as indigenous, occurring in natural associations in habitats that existed prior to significant human impacts and alterations of the landscape.

“Native Vegetation” means vegetation found in the natural community that is suited to the soil, topography, hydrology, and wildfire risk of a particular site.

“Noxious weed” means any weed or plant which the board of county commissioners acting as the governing body of the district, and with the advice of the county agent, declares to be harmful or to possess noxious characteristics. NMSA 1979, § 76-7-2.

“Weed” means a non-native plant that disrupts or has the potential to disrupt or alter the natural ecosystem function, composition and diversity of the site it occupies. Its presence deteriorates the health of the site. It is an invasive species that requires a concerted effort of manpower and resources to remove from its current location, if it can be removed at all. WEEDS shall also mean plants that, by reason of abandonment, lack of care or lack of maintenance, choke outgrowth of other plant material in the area.

E. New Mexico Noxious Weed List

The New Mexico Department of Agriculture has determined the following noxious weeds as the most common for control or eradication:

1. Salt cedar
2. African rue
3. Russian knapweed
4. Yellow and purple star thistle
5. Camelthorn
6. Yellow toadflax
7. Onion weed

For a comprehensive list noxious weed as classified by the New Mexico Department of Agriculture see <http://www.nmda.nmsu.edu/apr/noxious-weed-information/>.

F. Growth and Accumulation

It is unlawful for any owner, lessee or occupant having charge or control of any occupied, unoccupied or unimproved lot or tract of land within the City to permit or maintain any growth of weeds or vegetation that are highly flammable or attain a height greater than twenty (20) inches or any accumulation of weeds on any such lot or tract of land, including any curb, gutter and sidewalks and the area located between the property line and the middle of the alley adjacent to any such lot or tract of land.

G. Duty of Owner

It shall be the duty of any owner, lessee, occupant or person in charge of or in control of any occupied, unoccupied or unimproved lot or tract of land to either cut or eradicate the accumulation of weeds and remove and lawfully dispose of any cuttings as often as is necessary in order to comply with this provision.

H. Approved Methods of Weed Control

Approved methods of controlling weeds shall be mowing, cutting; digging, chemical treatment or other methods designed to remove the weeds but not disturb other vegetation or unnecessarily disturb the soil. The scraping and tillage

of lots and tracts of land is prohibited, unless permission of the City is first obtained; except, that scraping and tillage as part of normal construction activities or as ground preparation for agriculture or landscaping activities shall be allowed. The City may allow scraping and tillage of lots or tracts of land when this will not detract from or violate the clear intent and purpose of this chapter.

I. Notice to Owner

If the provisions of Article are not complied with, the City shall notify the owner, lessee or occupant, or any person having charge or control of any occupied unoccupied or unimproved lot or tract of land, of the non-compliance with the provisions of this chapter by the issuance of a ten (10) day written warning. In the event such owner and lessee or occupant, or any person having charge or control of such lot or tract of land, cannot be determined or the owner shall be a nonresident of the City, such notice may be served by posting a copy of the written notice upon the premises, with a copy mailed to the last known address of the owner. A citation will be issued for all violations remaining after the expiration of the warning period. Repeat offenders will no longer be issued a warning but will be issued a citation for all additional violations of this Article.

J. Removal by City

- A. If the owner, lessee or occupant or a person having charge or control of any occupied, unoccupied or unimproved lot or tract of land such lot or tract of land fails to comply with the provisions of this Article in its entirety within ten (10) days of written notification, the City may cause such weeds to be cut and/or the cuttings or any accumulation of weeds removed.
- B. In any event, should it appear to be a matter of public necessity for health or safety reasons, the City may give notice that the weeds must be cut or removed immediately.
- C. Should there be noncompliance, the City Manager is authorized to cause such weeds to be cut and/or the cuttings or any accumulation of weeds removed immediately.
- D. The actual cost of the cutting or removal of weeds, plus any other penalties or costs allowed by law in connection therewith, under any of the circumstances herein set out, shall be billed to the owner of record, who shall have fifteen (15) days to submit payment in full. Failure to remit shall cause a lien to be placed upon the property from which such weeds were removed in the manner prescribed by law.

K. Violation-Penalty

Any person who shall fail and neglect to cut the weeds and remove the cuttings or any accumulation of weeds as provided in this Article or who shall fail, neglect or refuse to comply with the provisions of any section of this Article or of any notice herein provided for, or who shall violate any of the provisions of this chapter whatsoever, or who shall resist or obstruct the City or its authorized representatives in the cutting of weeds or the removal of cuttings or the removal of the accumulation of the weeds shall, upon conviction thereof, be subject to a fine not to exceed fifty dollars (\$50.00) and each day on which such violation continues may constitute a separate offense.

13-3-6 GRAFFITI

A. Defined

Graffiti means the unauthorized and intentional act of inscribing, spraying of paint or ink, chalk, dye or other similar substances on public or private buildings, structures and places.

1. Graffiti on public and private property is a public blight that not only depreciates the value of property but also the value of adjacent and surrounding communities. The City Council finds that graffiti or related inscribed material is obnoxious and authorizes that a program be instituted that allows for the use of City funds to remove graffiti on public and private property. It is the intent of the City Council to provide for the prohibition of the placement of graffiti on public and private property as set forth in this subsection.
2. It is unlawful for any person to paint, chalk or otherwise apply graffiti on public or privately owned structures located on public or privately owned real property within this City.

B. Graffiti Removal on Private Property

Whenever the City determines that graffiti is located on any private property that is capable of being viewed by a person using any public right-of-way and with the property owner's consents, the City shall be authorized to provide for the removal of the graffiti as follows:

1. The City may provide paint free of charge to the owner of the property in the amount necessary to cover the specific area containing the graffiti. It shall be the owner's responsibility to determine the color of paint necessary and to paint out the graffiti within five (5) calendar days from receipt of paint from the City.

2. The City however, may remove the graffiti upon consent of the owner of the property. If the City provides for the removal of graffiti, it shall authorize or undertake to provide only for the painting or repair of a graffiti area.
3. If the private property owner chooses not to remove, paint-over or repair the graffiti, the City shall obtain written consent of the owner and the owner may execute an appropriate release prepared by the City attorney. The owner of the property shall be charged only for the actual cost incurred by the City to remove the graffiti.

C. Penalties

- a. Any person convicted of violating this section is guilty of a petty misdemeanor and may be required to perform a mandatory sixty (60) hours of community service and may be required to make restitution to the property owner for the cost of damages and restoration.
- b. Any person convicted of violating this section where property damages exceed one thousand dollars (\$1,000.00) is guilty of a fourth degree felony and may be required to perform a mandatory one-hundred and twenty (120) hours of community service and may be required to provide restitution to the property owner for the cost of damages and restoration as a condition of probation or following any term of incarceration as a condition of parole.

13-3-7 NOISE

A substantial body of research has demonstrated that exposure to excessive noise and persistent vibration is a serious hazard to public health, welfare, safety and quality of life. It is therefore declared to be the intent of the City Council (through this ordinance and through other City regulations) to minimize exposure to the physiological and psychological dangers of excessive noise and to protect, promote and preserve the public health, safety and welfare of the residents of the City of Rio Communities. It is the express intent of the City Council to control the level of noise in a manner that ensures the use, value and enjoyment of property; the conduct of business and promotes sleep and repose in an environment free from unnecessary and excessive noise. Therefore, in the public interest, noise that is excessive, persistent, unnecessary, harmful, annoying or that jeopardizes the health or welfare or degrades the quality of life within the City shall be controlled and declared a public nuisance.

A. Definitions

For the purpose of this Section, the following meanings shall apply:

1. "Daytime" shall mean from 7:00 a.m. (0700 hours) to 10:00 p.m. (2200 hours).

2. "Decibel" shall mean any decibel (dB) measurement made based on the reference sound pressure and measured with a sound-level meter using the A-weighting network.
3. "Nighttime" shall mean from 10:00 p.m. (2200 hours) to 7:00 a.m. (0700 hours).
4. "Noise" shall mean any sound that endangers or injures the safety or health of any person; annoys or disturbs a reasonable person of normal sensitivities; or endangers or injures personal or real property.
5. "Plainly audible" shall mean any sound that can be detected by a person of normal sensitivities and without any artificial or amplifying aid.
6. "Property boundary" shall mean an imaginary line along the ground surface and its vertical extension that separates real property owned, leased or otherwise legally controlled by one person from the property that is owned, leased or otherwise legally controlled by another person, including intra-building real property divisions.

B. Loud Noises Prohibited

1. It shall be unlawful for any person to use, operate or play a radio, phonograph, television, record, compact disc or tape player, musical instrument, loudspeaker, sound-amplifying equipment, or other machine or device capable of producing or reproducing sound in such a manner or with such volume or duration that it is plainly audible:
 - a. Inside the confines of the dwelling unit, house, or apartment of another person; or
 - b. At a distance of fifty (50) feet or more from the device, except for devices permitted for use at public parks or recreation fields, sporting events, school-sponsored activities on school grounds, or duly authorized parades, public functions or commemorative events.
2. It shall be unlawful for any person to produce or allow noise during nighttime hours that is plainly audible to another person who is either inside the confines of the dwelling unit, house, or apartment or at a distance of fifty (50) feet or more from the source of the noise.

3. It shall be unlawful for any person to allow any animal to create noise that is plainly audible for at least once a minute for ten consecutive minutes:
 - a. Inside the confines of a dwelling unit, house, or apartment of another; or
 - b. At a distance of fifty (50) feet or more from the animal.

This provision shall not apply if the noise is due to harassment of or injury to the animal or due to a trespass upon the premises where the animal is located.

4. It shall be unlawful to install and operate, either on the inside or outside of any store, shop, business establishment, warehouse or commercial building, any loudspeaker, sound-amplifying equipment, or other sound-producing or reproducing device that is capable of emitting music, noise, sounds or voice in such a manner that it is plainly audible on any public sidewalk or street unless it is used only intermittently for announcing or paging an individual or unless it signals the ringing of a telephone, signals danger from smoke, fire or a burglary or signals the beginning or ending of work or school or unless it is operated in accordance with the conditions specific to a zone.
5. It shall be unlawful to play or permit the playing of any radio, stereo, tape or compact disc player, loud speaker, sound-amplifying equipment or other electronic device or mechanical equipment used for the amplification of sound within a motor vehicle and that is plainly audible from outside the motor vehicle at a distance of fifty (50) feet or more from the vehicle. This provision shall not apply to sirens, loud speakers and emergency communication radios in public safety vehicles, nor shall this provision apply to motor vehicle alarms or other security devices.
6. It shall be unlawful to create plainly audible noise in residential areas during nighttime hours in connection with:
 - a. Loading and unloading of refuse, waste or recycled materials.
 - b. Lawn care, leaf removal, gardening, tree maintenance or tree removal and other landscaping, lawn or timbering activities.
7. It shall be unlawful to operate or cause to be operated any equipment used on an active site in the construction, repair, alteration or demolition of buildings, streets, roads, alleys or appurtenances thereto between the hours of 10:00 p.m. and 7:00 a.m. The use of construction vehicles as transportation to and from an active construction site are likewise prohibited during nighttime hours.

8. It shall be unlawful to repair, rebuild or modify any motor vehicle or other mechanical equipment or device between the hours of 10:00 p.m. and 7:00 a.m. in a manner this is plainly audible at a distance of fifty (50) feet or more from the source.
9. It shall be unlawful to not promptly deactivate an alarm system when it is plainly audible at a distance of fifty (50) feet or more from such alarm within thirty (30) minutes of hearing the alarm or receiving notice of the alarm's activation.

C. Exceptions

The following specific activities or sources of noise shall be exempt from the regulations as set forth in this Article:

1. Sounds generated in business, industrial, and mixed-use zoning districts that are necessary and incidental to the uses permitted therein.
2. Sounds generated from activities or land use for which a permit has been issued or the Planning & Zoning Commission has granted an exception.
3. Activities for which the regulation of noise has been exempted by federal law including religious or political gatherings and other activities protected by the First Amendment to the United States Constitution.
4. Sounds emitted in the performance of emergency work or for the purpose of alerting persons to the existence of an emergency.
5. Lawful activities conducted on or in public and school athletic facilities and on or in publicly owned properties and facilities.
6. Religious services, religious events, or religious activities or expressions that are a part of such service, event, activity or expression including but not limited to, music, singing, bells, chimes and organs.
7. Sounds generated from or incidental to emergency repairs to public and private utilities.
8. Sounds generated from or incidental to any emergency public works function.
9. Sounds generated from construction and maintenance to public roads, highways, and bridges.

- 10. Sounds generated from erosion and sediment mitigation.
- 11. Sounds generated from airplanes and trains.

D. Permissive Levels

Zone Categories of Receiver Measured at Property Line

| Zone | Time Intervals | Exterior Noise Levels (dB) |
|-------------|---------------------|----------------------------|
| Residential | 7:00 am to 10:00 pm | 55 |
| | 10:00 pm to 7:00 am | 45 |
| Commercial | 7:00 am to 10:00 pm | 65 |
| | 10:00 pm to 7:00 am | 45 |
| Industrial | 7:00 am to 10:00 pm | 75 |
| | 10:00 pm to 7:00 am | 60 |

13-3-8 NOTICE FOR ABATEMENT

Any city police officer, zoning enforcement officer or fire chief or inspector, upon observing any violation of this Article, 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. The notice shall describe the violation and shall establish a reasonable time limit for abatement of the nuisance by the owner or occupant or tenants. The time limit to abate the violation shall be not less than two days or more than thirty days after service of the notice. The notice may be served either personally or by registered mail to the last known address of the owner's or occupant.

13-3-9 FAILURE TO COMPLY

If the owner or occupant where the nuisance violation has occurred fails to abate the nuisance within the prescribed time limit, then any city police officer, zoning enforcement officer or fire chief or inspector shall file in the Municipal Court, a complaint that shall state the nuisance violation. The owner or occupant of the property shall then be held to answer to the court for the stated violation.

13-3-10 ASSESSMENT COLLECTION

If a person is convicted of violating this Article and still refuses to remove the junk, trash or refuse, the City may enforce this section in any manner consistent with law.

Should the person refuse or fail to pay any assessment, the City shall collect such assessment as provided by law.

13-3-11 NUISANCE INJUNCTION

When a nuisance exists as set forth in this Article, the chief of police, zoning enforcement officer or fire chief or inspector, shall maintain a complaint in the name of the City, perpetually, that directs any person from permitting or maintaining a nuisance and to abate the same.

APPROVED, ADOPTED AND SIGNED this 13 day of May 2014 by the Governing Body of the City of Rio Communities.

Mark Gwinn, Mayor
City of Rio Communities

ATTEST:

Mary Lee Serna, Mayor Pro Tem
City of Rio Communities

End of Document

City of Rio Communities, New Mexico

Ordinance No: 2016-46

TITLE: AN ORDINANCE AMENDING ORDINANCE NO. 2014-19, DATED: MAY 13, 2014. CHAPTER 13, PUBLIC PEACE, MORALS AND VICE

AMENDMENT 1: Amend Section 13-3-3 (F)(1)(b) Definitions

Amend:

Section 13-3-3(F)(1)(b) Definitions, reads as follows:

- a. "Inoperative" or "inoperative motor vehicle" means any motor vehicle, which by reason of dismantling, disrepair or other cause, is incapable of being propelled under its own power.

Amend 13-3-3(F)(1)(b) to read as follows:

- b. "Inoperative, or inoperative motor vehicle" means any motor vehicle that by reason of dismantling, disrepair, or damage that causes or renders the vehicle incapable of being propelled or operated under its own power, or is in violation of the New Mexico Uniform Traffic Ordinances, Codes or Statues, or because of lack of insurance and registration, is not legal for public roadway use.

PASSED, APPROVED AND ADOPTED THIS 22nd DAY OF March 8, 2016.

City of Rio Communities Governing Body

Mark Gwinn, Mayor

William (Bill) Brown, Councilor

Margaret (Peggy) Gutjahr, Councilor

Arturo Sais, Councilor

ATTEST:

Elizabeth (Lisa) Adair, Municipal Clerk