

CITY OF ELEPHANT BUTTE
ORDINANCE NO. 149

AN ORDINANCE OF THE CITY OF ELEPHANT BUTTE, NEW MEXICO
AMENDING CHAPTERS 90, 95 AND 135 OF THE ELEPHANT BUTTE CODE OF
ORDINANCES, STREAMLINING THE NOTIFICATION, ENFORCEMENT AND
PENALTY PROCESS FOR CERTAIN MUNICIPAL CODE VIOLATIONS.

WHEREAS, the City continues its concerted efforts addressing nuisance properties, there is an interest to streamline the process for dealing with recurring violations on the same property; and

WHEREAS, the existing City Code for environmental, weed and nuisance violations sets forth a specific process by which conflicting minimum notification and warning periods are prescribed for each violation, regardless of whether a similar violation has occurred on the property in the past; and

WHEREAS, the City has determined that it would be in the best interest of the public's health, safety and protection of property values that a more expedient enforcement and penalty system be established to combat recurring code violations on the same property; and

WHEREAS, the governing body did conduct a duly advertised public hearing on March 18, 2015 to consider this ordinance.

NOW THEREFORE, BE IT ORDAINED By The Governing Body Of The City Of Elephant Butte, that Chapters 90, 95 and 135 of the Code of Ordinances of the City of Elephant Butte be amended as follows with **BOLD CAPITAL** lettering indicating new material and deleted material contained within ~~[Brackets]~~:

I. Section one. Chapter 90 is amended as follows:
(§§90.01 -90.08 remain unaltered).

§ 90.09 NOTICE.

(A) Upon receiving a report of the existence of a junk vehicle, the Code Enforcement Officer will first determine if the vehicle meets any of the definitions within this subchapter which would serve to cause an exemption. If none are

found, a notice to the occupant of the premises will be sent **IN ACCORDANCE WITH §90.11 ABATEMENT PROCEDURE AND § 90.99 PENALTY.**

~~[At a minimum it will contain the following information:~~

- ~~— (1) A statement of the nature of the nuisance which refers to this section;~~
- ~~— (2) A demand that the junk vehicle be removed within 30 days of the receipt of the notice;~~
- ~~— (3) A statement indicating that failure to remove the junk vehicle within 30 days of receipt of the notice may expose the occupant to a fine not to exceed \$10 a day for every day the vehicle remains un removed after 30 days following the occupant's receipt of the notice; and~~
- ~~— (4) A statement indicating that if the occupant does not comply within the 30 days, the city will have the vehicle removed at the owner's expense.~~
- ~~— (B) If any notice is returned as undeliverable, a notice will be posted elsewhere as all notices pertaining to the city are which would include the post office, Community Center, City Hall, fire station, and Pat's Chevron.]~~

(§90.10 remains unaltered).

§ 90.11 ABATEMENT PROCEDURE.

(A) Whenever it shall appear that a nuisance exists, the governing body may direct the same to be abated and removed. If the nuisance is found on private property, the Code Enforcement Officer shall provide a written notice to the owner, agent or occupant to remove and/or cease at the owner's expense within ~~[30 days]~~ **THE PRESCRIBED NOTICE PERIOD**; if the owner, agent or occupant shall fail, refuse or neglect to comply with the requirements of any such notice the governing body may cause the nuisance to be removed.

(B) IF ANY VIOLATION OF THIS CHAPTER IS DESIGNATED A NUISANCE UNDER THE PROVISIONS OF THIS CHAPTER, SUCH NUISANCE MAY BE SUMMARILY ABATED BY THE CITY IN ADDITION TO THE IMPOSITION OF A FINE OR IMPRISONMENT. All expense incurred by removal shall be paid by the owner, agent, occupant or other person as shall have caused or permitted the nuisance.

(§§90.12 -90.41 remain unaltered).

§ 90.99 ENFORCEMENT AND PENALTY.

(A) THE CODE ENFORCEMENT OFFICER SHALL HAVE THE AUTHORITY TO INSPECT, ENFORCE AND ISSUE MUNICIPAL CITATIONS FOR SUSPECTED VIOLATIONS OF THE PROVISIONS OF THIS CHAPTER. THE CITY MANAGER MAY ALSO DESIGNATE

ANOTHER CITY OFFICIAL TO ENFORCE THIS CHAPTER AT HIS OR HER DISCRETION.

(B) Any person violating any provision of this chapter shall be subject to §10.99.

(C) When a violation of §§ 90.01 through 90.12 is suspected, ~~[the following shall apply:]~~ A WRITTEN WARNING NOTICE MAY BE ISSUED PRESCRIBING A PERIOD - NOT TO EXCEED 30 DAYS - BY WHICH TO CURE OR ABATE THE SUSPECTED VIOLATION. AT THE DISCRETION OF THE CODE ENFORCEMENT OFFICER, A WRITTEN CITATION TO THE MUNICIPAL COURT MAY BE ISSUED WITHOUT FIRST PROVIDING AN OPPORTUNITY FOR NOTICE AND CURE OF THE VIOLATION IF IT IS DETERMINED THAT THE VIOLATION HAS PREVIOUSLY OCCURRED AT THE PROPERTY OR AN IMMEDIATE THREAT TO PUBLIC HEALTH AND SAFETY EXISTS.

~~[(1) For a first offense, the offender may be issued a warning by the Code Enforcement Officer; and~~

~~—(2) For a second offense or if the offense continues for more than 10 days from the date of the warning, a written citation to Municipal Court will be issued.]~~

II. Section two. Chapter 95 is amended as follows:
(§§95.01 -95.03 remain unaltered.)

§ 95.04 WEEDS; DUTY TO REMOVE.

It shall be the duty of any occupant, owner, or person in control to forthwith cut and remove the weeds from the property owned by him or her or under his or her control. ~~[within 14 days after being notified by the city officials to remove the same.]~~

§ 95.05 ~~[SERVICE OF]~~ ENFORCEMENT AND NOTICE.

(A) THE CODE ENFORCEMENT OFFICER SHALL HAVE THE AUTHORITY TO INSPECT, ENFORCE AND ISSUE MUNICIPAL CITATIONS FOR SUSPECTED VIOLATIONS OF THE PROVISIONS OF THIS CHAPTER. THE CITY MANAGER MAY ALSO DESIGNATE ANOTHER CITY OFFICIAL TO ENFORCE THIS CHAPTER AT HIS OR HER DISCRETION.

(B) WHEN A VIOLATION OF THIS CHAPTER IS SUSPECTED, A WRITTEN WARNING NOTICE MAY BE ISSUED PRESCRIBING A PERIOD - NOT TO EXCEED 30 DAYS - BY WHICH TO CURE OR ABATE THE SUSPECTED VIOLATION. AT THE DISCRETION OF THE CODE ENFORCEMENT OFFICER, A WRITTEN CITATION TO THE

MUNICIPAL COURT MAY BE ISSUED WITHOUT FIRST PROVIDING AN OPPORTUNITY FOR NOTICE AND CURE OF THE VIOLATION IF IT IS DETERMINED THAT THE VIOLATION HAS PREVIOUSLY OCCURRED AT THE PROPERTY OR AN IMMEDIATE THREAT TO PUBLIC HEALTH AND SAFETY EXISTS.

§ 95.06 FAILURE TO ABATE.

- (A) If the person so served does not abate the nuisance within ~~[14 days]~~ **THE PRESCRIBED TIME PERIOD SET FORTH IN THE NOTICE**, the city may proceed to abate the nuisance, keeping an account of the expenses of the abatement, and the expense shall be charged and paid by the owner, occupant, or person in control.
- (B) **IF ANY VIOLATION OF THIS CHAPTER IS DESIGNATED A NUISANCE UNDER THE PROVISIONS OF THIS CHAPTER, SUCH NUISANCE MAY BE SUMMARILY ABATED BY THE CITY IN ADDITION TO THE IMPOSITION OF A FINE OR IMPRISONMENT.**

§ 95.99 PENALTY.

Any person, occupant or owner who shall fail or neglect to cut the weeds and remove the cuttings or any accumulation of weeds as provided in this chapter, or who shall fail, neglect or refuse to comply with the provisions of this chapter, or who shall resist or obstruct ~~[the Mayor or his or her designated]~~ **CITY** representatives in the cutting of weeds shall, upon conviction thereof, be subject **TO THE PENALTIES PRESCRIBED IN §10.99.** ~~[to a fine of not more than \$500 or imprisoned for not more than 90 days, or both.]~~ Each day the violation continues shall constitute a separate offense.

III. Section three. Chapter 135 is amended as follows:
(§§135.01 -135.02 remain unaltered).

§ 135.03 NOTICE OF NUISANCE AND ENFORCEMENT.

~~[Any municipal police officer, upon observing any violation of this chapter, 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 thereof by the owner occupant or tenants, which limit shall be not less than two days or more than 30 days after the service of the notice. The notice may be served either personally or by registered mail at the owner's or occupant's last known address.]~~

(A) THE CODE ENFORCEMENT OFFICER OR LAW ENFORCEMENT OFFICER SHALL HAVE THE AUTHORITY TO INSPECT, ENFORCE AND ISSUE MUNICIPAL CITATIONS FOR SUSPECTED VIOLATIONS OF THE PROVISIONS OF THIS CHAPTER. THE CITY MANAGER MAY ALSO DESIGNATE ANOTHER CITY OFFICIAL TO ENFORCE THIS CHAPTER AT HIS OR HER DISCRETION.

(B) WHEN A VIOLATION OF THIS CHAPTER IS SUSPECTED, A WRITTEN WARNING NOTICE MAY BE ISSUED PRESCRIBING A PERIOD - NOT TO EXCEED 30 DAYS - BY WHICH TO CURE OR ABATE THE SUSPECTED VIOLATION. AT THE DISCRETION OF THE CODE ENFORCEMENT OFFICER OR LAW ENFORCEMENT OFFICER, A WRITTEN CITATION TO THE MUNICIPAL COURT MAY BE ISSUED WITHOUT FIRST PROVIDING AN OPPORTUNITY FOR NOTICE AND CURE OF THE VIOLATION IF IT IS DETERMINED THAT THE VIOLATION HAS PREVIOUSLY OCCURRED AT THE PROPERTY OR AN IMMEDIATE THREAT TO PUBLIC HEALTH AND SAFETY EXISTS.

~~§ 135.04 COMPLAINT.~~

~~In the event the owner or occupant of the property where the nuisance violation of this chapter exists, has failed, within the prescribed time, to abate the nuisance, then any municipal police officer, shall file a complaint charging violation of this chapter with the Municipal Court demanding that the owner of the property, or the occupant thereof, or both be held to answer to the court for the violation of this chapter.~~

§ 135.05 REMOVAL OF NUISANCE; ABATEMENT PROCEDURE.

(A) WHENEVER IT SHALL APPEAR THAT A NUISANCE REMAINS, OR in the event that a person is convicted of violating this chapter and still refuses to remove the junk, trash or refuse, ~~[the municipality shall collect the assessment as provided by law.]~~ THE GOVERNING BODY MAY DIRECT THE SAME TO BE ABATED AND REMOVED. IF THE NUISANCE IS FOUND ON PRIVATE PROPERTY, THE CODE ENFORCEMENT OFFICER SHALL PROVIDE A WRITTEN NOTICE TO THE OWNER, AGENT OR OCCUPANT TO REMOVE AND/OR CEASE AT THE OWNER'S EXPENSE WITHIN THE PRESCRIBED NOTICE PERIOD; IF THE OWNER, AGENT OR OCCUPANT SHALL FAIL, REFUSE OR NEGLECT TO COMPLY WITH THE REQUIREMENTS OF ANY SUCH NOTICE THE GOVERNING BODY MAY CAUSE THE NUISANCE TO BE REMOVED.

(B) IF ANY VIOLATION OF THIS CHAPTER IS DESIGNATED A NUISANCE UNDER THE PROVISIONS OF THIS CHAPTER, SUCH

NUISANCE MAY BE SUMMARILY ABATED BY THE CITY IN ADDITION TO THE IMPOSITION OF A FINE OR IMPRISONMENT. ALL EXPENSE INCURRED BY REMOVAL SHALL BE PAID BY THE OWNER, AGENT, OCCUPANT OR OTHER PERSON AS SHALL HAVE CAUSED OR PERMITTED THE NUISANCE.

~~[§ 135.06 INJUNCTIONS.~~

~~—The Chief of Police, when a nuisance exists as set forth in this chapter, 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.]~~

IV. Section four. All other provisions of Chapters 90, 95 and 135 not specifically amended in sections one through three of this ordinance herein, shall remain unchanged and in full force and effect as written.

V. Section five. Effective date. This ordinance shall become effective five days following publication.


PASSED, APPROVED AND ADOPTED by the Governing Body of the City of Elephant Butte, New Mexico, this 18th day of March, 2015.

BY:



Eunice Kent, Mayor

Attest:



Karen Rieth, City Clerk