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**CITY OF ELEPHANT BUTTE  
ORDINANCE NO. 173**

**AN ORDINANCE DEFINING AND PROHIBITING NUISANCES**

**WHEREAS**, the City of Elephant Butte, New Mexico (“City”) has authority to define and abate nuisances and impose penalties upon a person who creates or allows nuisances to exist (*see* NMSA 1978, §§ 3-18-5 and 3-18-17);

**WHEREAS**, the City currently has multiple, competing or surplus provisions within its Code relating to nuisances; and

**WHEREAS**, the health, safety, welfare and order of the City will be best served by removing the existing nuisance provisions from the City Code and adopting a single, clear nuisance ordinance.

**NOW THEREFORE, BE IT ORDAINED** by the Governing Body of the City of Elephant Butte as follows:

**1. Title**

This ordinance shall be known as the “Elephant Butte Nuisance Abatement Ordinance.”

**2. Purpose**

The purpose of this ordinance is to help ensure that the City of Elephant Butte remains clean, orderly, and attractive for the benefit of its residents and visitors through the prohibition and abatement of littering, disturbing noise, and public nuisances.

**3. Definitions.**

- a. “Antique vehicle” means a passenger car or truck which is at least 35 years old and is being preserved or restored for historical purposes or other such special-interest purposes.
- b. “Garbage” means all putrescible food or other organic wastes and other such worthless or offensive matter commonly generated by households and businesses, the accumulation of which may create a nuisance or be deleterious to public health or offensive to the senses; also referred to as “trash.”
- c. “Hazardous waste” means any solid, liquid, semisolid or gaseous material which may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.
- d. “Inoperable motor vehicle” means a motor vehicle which, by reasons of dismantling, disrepair, accident or other cause, is incapable of being propelled under its own power.
- e. “Junk trailer” means a trailer that has been continuously inoperable for at least one hundred twenty (120) days, or which has been wrecked, or which has been fully or partially dismantled for ten (10) days or more.

- 39 f. “Junk vehicle” means a motor vehicle other than an antique or special interest  
40 vehicle that has been continuously inoperable for at least one hundred twenty (120)  
41 days, or which has been wrecked, or which has been fully or partially dismantled  
42 for ten (10) days or more.
- 43 g. “Junk vessel” means a vessel that has been continuously inoperable for at least one  
44 hundred twenty (120) days, or which has been wrecked, or which has been fully or  
45 partially dismantled for ten (10) days or more.
- 46 h. “Littering” means throwing, dropping or discarding any solid waste in any public  
47 or private place within the City except in authorized waste receptacles.
- 48 i. “Motor vehicle” means every vehicle that is self-propelled and every vehicle that  
49 is propelled by electric power obtained from batteries. This includes but is not  
50 limited to cars, trucks, vans, tractors, motorhomes, recreational vehicles, all-terrain  
51 vehicles, golf carts, motorcycles and mopeds.
- 52 j. “Outdoor storage” means the storage of any materials subject to the provisions of  
53 this ordinance in a setting that is not entirely within an enclosed structure.
- 54 k. “Person” means a human being or business entity.
- 55 l. “Property” means any real property within the City. When a portion of privately  
56 owned property abuts on a public right-of-way or easement, the responsibility of  
57 the person in control for purposes of this ordinance shall extend to the center of the  
58 public alley or easement or back of street curb line, or edge of payment, or at the  
59 edge of dirt roads; however, this shall not restrict in any manner the maintenance  
60 of the right of way or easement by the City.
- 61 m. “Refuse” means non-putrescible solid waste such as cold ashes, wastepaper, rags,  
62 wooden, cardboard or paper boxes, bottles, broken ware, tin cans, plastics and  
63 similar residential and commercial waste materials; also referred to as “trash.”
- 64 n. “Rubbish” means waste or rejected material; anything worthless or valueless in its  
65 present form; garbage; trash.
- 66 o. “Solid waste” means garbage, refuse, rubbish, trash or yard waste.
- 67 p. “Special interest/historic vehicle” means a motor vehicle of any age which, because  
68 of its significance, is being collected, preserved, restored or maintained by a person  
69 as a leisure pursuit.
- 70 q. “Trailer” means all a nonautomotive vehicle designed to be hauled by road and  
71 includes, but is not limited to, campers, concessions trailers, dry vans, flatbed  
72 trailers, horse trailers, livestock trailers, lowboys, and non-motorized recreational  
73 vehicles.
- 74 r. “Vessel” means watercraft, other than a seaplane, normally used as a means of  
75 transportation on water. This includes sailboats, motorboats, paddleboats, and jet  
76 skis.
- 77 s. “Weeds” means all plant growth at any stage of maturity which:  
78 i. Exceeds 12 inches in height, except healthy shrubs, healthy native  
79 vegetation flowers, herbs or produce for human consumption grown in a  
80 tended and cultivated garden; unless the vegetation by its density or  
81 location, constitutes a detriment to the health, benefit and welfare of the

- 82 public and community, or a hazard to traffic, or creates a fire hazard, or  
83 otherwise interferes with the removal of weeds;  
84 ii. Regardless of height, harbors, conceals or invites deposits or accumulation  
85 of refuse or trash;  
86 iii. Gives off unpleasant or noxious odors; and  
87 iv. Is dead or diseased.

88 This definition of “weeds” does not include indigenous vegetation which remains  
89 in an undisturbed state on undeveloped lots or large parcels of land.

- 90 t. “Yard waste” means yard clippings, grass cuttings, yard cleanings, fallen trees, tree  
91 limbs, slash, leaves or pine needles.  
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#### 93 **4. Littering**

- 94 a. Littering is prohibited within the City. This prohibition includes the throwing or  
95 discarding of any solid waste or hazardous waste from a vehicle.  
96 b. Open loads in vehicles. No person shall drive or move any truck or other vehicle  
97 with materials of any kind in an open bed unless the vehicle is so constructed,  
98 loaded or secured as to prevent its load or contents from being inadvertently  
99 discharged from the vehicle.  
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#### 101 **5. Disturbing Noise**

- 102 a. It is unlawful for any person to make, continue, or cause to be made or continued  
103 any noise disturbance within the City between the hours of 9:00 p.m. and 7:00 a.m.  
104 the following day, as follows:  
105 i. By using or permitting the operation of any machine or device for the  
106 production of sound in a manner whereby the sound is plainly audible (1)  
107 at the property boundary of the source, (2) 50 feet from the device when  
108 operated within a vehicle on a public right of way; or (3) through the walls  
109 of a building common to two or more occupants, including but not limited  
110 to apartments, duplexes, motels, and hotels.  
111 ii. By using or permitting the use of any equipment or tools used in  
112 construction, repair, alteration, or demolition work on buildings, structures,  
113 streets, alleys or appurtenances thereto in residential or commercially zone  
114 areas.  
115 iii. By using or permitting the use of any power equipment or tools used in  
116 grounds maintenance outdoors in any residential or commercially zoned  
117 areas.  
118 b. Exceptions  
119 i. Noise of safety signals and warning devices.  
120 ii. Noise from any authorized emergency vehicle  
121 iii. Noise from emergency work; and  
122 iv. Noise from activities of a temporary duration permitted by law for which a  
123 special use permit has been obtained.

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## 6. Nuisances Generally

In the interests of the health, safety and welfare of residents and visitors to the City, the following property conditions are declared to be public nuisances, and it shall be unlawful for any owner or occupant of real property to create, allow or maintain any of these conditions.

- a. Unsanitary or hazardous premises, consisting of, but not limited to:
  - i. Solid waste or hazardous waste;
  - ii. Wastewater, stagnant water, sewage or any conglomeration of residue thereof that emits odors or serves as a feeding or breeding place for flies, insects, spiders, rodents or other vermin;
  - iii. Weeds, brush or other wild, uncontrolled growth of vegetation; or
  - iv. Dead animals except for household pets properly buried.
- b. Any building or other structure which is in such a dilapidated condition that it is unfit or structurally dangerous 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 that presents a more than ordinarily dangerous fire hazard in the vicinity where it is located.
- c. Any condition that is attractive and dangerous to the public, such as a vacant, accessible building; buildings with broken or missing windows or doors; excavations; dilapidated walls or fences; wood piles other than stacked firewood; debris; or other materials or conditions creating a public hazard.
- d. The outdoor storage of salvage materials, junk, abandoned or unused furniture, appliances, sinks, toilets, cabinets, or other household fixtures.
- e. The outdoor storage of junk vehicles, junk vessels, or junk trailers subject to the exceptions specified in Section 7 below.
- f. The outdoor storage of motor vehicle parts, vessel parts, trailer parts, discarded or broken equipment or tools, or used or damaged lumber.
- g. All disagreeable or noxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of odors and stenches.
- h. Dense smoke, noxious fumes, gas, soot or cinders in such quantities as to escape the property and unreasonably affect other properties or persons.
- i. Any building, structure or other place or location where any activity in violation of local, state or federal law is conducted, performed or maintained. Examples of unlawful activity include, but are not limited to, prostitution, manufacture, use or distribution of controlled substances, and gambling.
- j. Any visual obstruction of clear-sight triangles as that term is defined in Section 155.05 of the City Code.

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**7. Exceptions**

- a. The prohibition on outdoor storage of certain motor vehicles, vessels, trailers and their parts does not apply to:
  - i. A motor vehicle, vessel, trailer or part thereof which is stored or parked in a lawful manner in accordance with an approved site plan on private property in connection with the business of a licensed motor vehicle, vessel, or trailer dealer or junkyard;
  - ii. An inoperable antique vehicle or special interest/historic vehicle stored by a person on that person’s property or by agreement with the property owner, provided that the vehicle and the outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view and the view from adjoining properties by means of a solid fence, trees, shrubbery, landscaping or combination thereof or other appropriate means; or
  - iii. Any motor vehicle in operable condition specifically adapted or constructed for racing.

**8. Enforcement by Enforcing Officer**

- a. Enforcing Officer. The Code Enforcement Officer or any law enforcement officer shall enforce the provisions of this ordinance. Enforcement may be facilitated by, but shall not be dependent upon, a complaint by a resident of the City or other person to the Code Enforcement Officer or a law enforcement officer.
  - i. For the purpose of this section, hereinafter the Code Enforcement Officer and any law enforcement officer enforcing this ordinance shall be referenced either collectively or singularly as “enforcing officer.”
- b. Notice and Citation.
  - i. When a violation of this ordinance is suspected, a written warning notice may be issued prescribing a period not to exceed thirty (30) days by which to cure or abate the suspected violation.
  - ii. If the suspected violation is not cured within the prescribed period, the enforcing officer may issue a citation and commence proceedings in the magistrate court. Alternatively, the enforcing officer may commence proceedings in the magistrate court by filing a complaint.
  - iii. At the discretion of the enforcing officer, a written citation may be issued or complaint filed without first providing an opportunity to cure if it is determined that the violation has previously occurred at the property or an immediate threat to public health and safety exists.
  - iv. It shall be unlawful for a person to fail or refuse to provide evidence of his or her identity to the enforcing officer upon request when such officer has reasonable cause to believe the person has committed a violation of this ordinance. Sufficient evidence of identity shall consist of a picture identification containing the person’s full legal name, address, and date of birth.

- 209 c. Responsible Party. Citations may be issued to and complaints filed against any  
210 person who violates any provision of this ordinance as well as any person  
211 responsible for the property upon which a violation of this ordinance occurs,  
212 including:
- 213 i. Owners of the real property or their agents; or
  - 214 ii. Occupants of the real property exercising actual control thereon.
- 215 d. Separate Violations. Each day in which a violation of this ordinance continues shall  
216 constitute a separate violation of this ordinance.
- 217 e. Penalty.
- 218 i. Upon the Magistrate Court finding a person responsible for a violation of  
219 this ordinance, the court shall impose a fine in an amount not less than  
220 twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00)  
221 for each violation and order the immediate abatement of any ongoing  
222 violation.

## 223 **9. Enforcement by the Governing Body**

- 225 a. In instances where a building or structure is ruined, damaged and dilapidated, or  
226 any premise is covered with ruins, rubbish, wreckage or debris, the Governing Body  
227 shall be entitled to enforce this ordinance by following the process prescribed by  
228 State statute at NMSA 1978, Section 3-18-5 as an alternative to the enforcement  
229 options available under Section 8, above.
- 230 b. The reasonable costs incurred by the City in removing any building, structure, ruins,  
231 rubbish, wreckage or debris, pursuant to subsection 9(a), shall constitute a lien upon  
232 against the building, structure, ruin, rubbish, wreckage or debris so removed and  
233 against the lot or parcel of land from which it was removed.
- 234 i. Alternatively, the City may pay for the costs of removal of any condemned  
235 building, structure, wreckage, rubbish or debris by granting to the person  
236 removing such materials the legal title to all salvageable materials in lieu of  
237 all other compensation.
- 238 c. Once the removal has taken place and the reasonable costs of removal incurred by  
239 the City can be calculated, the City Clerk shall prepare a "Notice of Lien" for filing  
240 in the office of the County Clerk, which shall contain the following information:
- 241 i. The number of the ordinance under which the lien is established;
  - 242 ii. The fact that a lien is established;
  - 243 iii. The general purpose of the lien;
  - 244 iv. The name of the owner of the property against which the lien is established  
245 as determined from the records of the county assessor;
  - 246 v. A description of the property against which the lien is established;
  - 247 vi. The amount of the lien; and
  - 248 vii. If the lien is for more than one period of time, the date for which the lien is  
249 established.
- 250 d. Following the recording of the Notice of Lien, the Governing Body may declare  
251 the full amount due and payable and proceed with foreclosure proceedings on the

252 subject property in the manner provided in NMSA 1978, Sections 3-36-1 through  
253 3-36-6.

- 254 i. If the lien is paid off at any time prior to foreclosure, including any accrued  
255 interest, the City Clerk shall release the lien in the manner specified in  
256 NMSA 1978, Section 3-36-3.

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258 **10. Repealer**

- 259 a. This ordinance repeals and replaces Section 132.02 and Chapters 90, 95 and 135 of  
260 the City Code as well as any prior ordinances or resolutions to the extent that they  
261 conflict with this ordinance.
- 262 b. If any section, subsection, sentence, clause, or phrase of this ordinance is for any  
263 reason held to be unconstitutional or invalid, such decision shall not affect the  
264 validity of the remaining provisions of this ordinance.

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266 **PASSED, APPROVED, AND ADOPTED by the Governing Body of the City of Elephant**  
267 **Butte, New Mexico, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.**

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270 Edna Trager  
271 Mayor  
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276 ATTEST:

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279 \_\_\_\_\_  
280 Rani Bush,  
281 Clerk-Treasurer  
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