

Chapter 8.15 **NUISANCES* NUISANCE** **ABATEMENT**

Sections:

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* Code reviser's note: This chapter, per MTC [9.05.010](#), is part of the "offense ordinance" of the town. See Chapter [9.05](#) MTC, Offenses, for definitions and rules of construction for offenses.

8.15.010 Public nuisance.

It is unlawful to commit public nuisance. Public nuisance consists of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which 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. [Prior code § 8-6-1]

8.15.020 Nuisance declared.

In the interest of the inhabitants of the municipality, it is necessary to prohibit the accumulation of junk, trash and refuse on property within the corporate limits of the municipality by declaring such accumulation a nuisance. The following are hereby declared to be a public nuisance:

A. Unoccupied Premises. It shall be 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. It shall be unlawful for any ~~person~~ ~~property~~ 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 thereof, which emits odors or serves as a feeding or breeding place for flies, insects or rodents; and which in the opinion of the sanitation officer is unsanitary, or injurious to public health. The accumulation of building materials, pipes, lumber or boxes may be maintained on said premises if said accumulation is evenly piled and stacked for a reasonable length of time to be determined by the town marshal or otherwise duly authorized representative.

C. Hazardous Premises. It shall be unlawful for any ~~person~~ ~~property~~ to permit in or about his premises 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.

1. Any overgrown brush, vegetation, or trees located along irrigation “acequias” that are used or have historically been used for community irrigation—and that are **not** the responsibility of EBID—must be maintained by the adjacent property owner. The property owner shall keep these areas clean, reasonably cleared, and free of unnecessary debris so that they do **not** create a nuisance or obstruct the flow of water. This maintenance requirement applies along the length of the “acequia” from the point where it enters the property to the point where it exits. Acequias shall not be blocked or decommissioned if it restricts the water from reaching properties downstream.

D. Accumulation of Solid Waste. It shall be unlawful for any ~~person~~ ~~property~~ to allow any solid waste to accumulate upon said premises, owned, leased, rented or occupied by him during intervals between collection thereof, except in the manner herein provided.

It shall be unlawful ~~any property to deposit~~ ~~allow~~ any solid waste in or upon the streets, alleys, sidewalks, gutters, curbing, storm sewers, parkways ~~or vacant lots~~ within the municipality, except in the manner and in the receptacles or containers 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~~ ~~property~~ using the receptacle and such receptacles shall be located only in such places as shall be readily accessible for removing and emptying the same, but shall not be placed in such place or position as may constitute a nuisance or obstruction to vehicular or pedestrian traffic.

F. Neglected Structures. Any building, dwelling, or accessory structure that, due to inadequate maintenance or care, exhibits visible signs of deterioration, wear, or lack of upkeep that, if left unaddressed, may lead to further decline or create a potential impact on neighboring properties.

Such conditions may include, but are not limited to, unsecured property, peeling or damaged exterior finishes, broken or missing building components, overgrown vegetation affecting the structure, accumulation of debris, or failure to maintain weatherproofing. A neglected structure does not rise to the level of a dilapidated or unsafe structure but requires corrective maintenance to preserve its condition and prevent further deterioration.

G. Dilapidated Structures. Any building, dwelling, or accessory structure that has deteriorated through prolonged neglect, damage, or lack of maintenance to the extent that its structural integrity, weatherproofing, safety systems, or essential components are significantly impaired. A dilapidated structure exhibits conditions that, if not promptly corrected, will continue to deteriorate and render the building unsafe, uninhabitable, or no longer capable of being used for its intended purpose. Such conditions may include, but are not limited to, failing or compromised structural elements; extensive deterioration of exterior walls, roofing, or foundation systems; broken or missing windows or doors that expose the interior; hazardous electrical, mechanical, or plumbing systems; or any condition that poses a threat to life, safety, or continued occupancy. The designation of a structure as dilapidated authorizes municipal intervention to ensure necessary repairs, abatement, or mitigation to prevent further deterioration and protect public health, safety, and welfare.

H. Outdoor Storage – Prohibited Acts – Exceptions.

1. It is unlawful for any ~~person, firm, or corporation~~ **property** 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 municipal 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 wholly enclosed garage or structure.
2. Exceptions. Any ~~person being owner or tenant~~ **property**, may store, permit to be stored or allow to remain upon his premises, any dismantled, partially dismantled or inoperative motor vehicle, or parts thereof, for a period not to exceed one week if such motor vehicle is registered in his name; and provided further, that any such ~~owner or tenant~~ **property** may, in the event of hardship, secure permission from the municipality to extend such period of time.
3. Definitions. As used in this section, the following terms shall have the following meanings:
 - a. "Motor vehicle" means any wheeled vehicle which is self-propelled or intended to be self-propelled;

- b. "Inoperative" or "inoperable motor vehicle" means any motor vehicle which by reason of dismantling, disrepair or other cause is incapable of being propelled under its own power;
- c. "Dismantled or partially dismantled vehicle" means any motor vehicle from which some part or parts which are ordinarily a component thereof have been removed or are missing.
- d. "Code Enforcement Officer" means that person authorized by the Town to carry out and enforce the provisions of Town ordinances, including but not limited to the provisions of this ordinance.
- e. "Foreclosed property" means a property for which any mortgage or tax foreclosure with respect to such property has been initiated.
- f. "Legal or equitable interest or right of possession" means every interest, title, estate, or right of possession recognized by law and equity, including without limitations freeholds, life estates, future interests, condominium rights, time-share rights, leaseholds, easements, licenses, liens, deeds of trust, contractual rights, mortgages, security interests, real estate contracts, and any right or obligation to manage or act as agent or trustee for any person or entity holding any of the foregoing.
- g. "Nuisance" means anything that is created or maintained on and commercial, industrial, or residential property within the Town limits without lawful authority which is injurious to public health, safety, morals, or welfare, or which by its unsightly appearance would tend to discourage residential or commercial development in its immediate area.
- h. "Owner" means the individual or entity in control of the property, and having a legal or equitable interest or right of possession, or their representative, agent, or attorney-in-fact.
- i. "Vacant" means a building, structure, or property which has not been legally occupied, used for its intended purpose, actively renovated or constructed, or secured such that there is control over unauthorized entry, for a period in excess of ninety (90) days. A building, structure, or property may be identified as vacant through any documented inspection by the Code Enforcement Officer or by notification by any individual or entity.
- j. "Zoning Hearing Examiner" means the person or firm delegated authority by the Governing Body to conduct hearings and make findings of fact and conclusions of law shall have professional experience in both land use and law. ~~Appeals of decisions by the~~

~~Zoning Hearing Examiner shall be heard by the Planning and Zoning Historical Appropriateness Commission.~~

4. This section shall be construed as being supplementary to any sections of this chapter relating to rubbish, litter, refuse, and shall not be construed to permit the parking or placing of dismantled, partially dismantled or inoperable motor vehicles on any public street. [Ord. 2006-02 § 1; prior code § 8-6-2]

8.15.25 Prohibitions and Enforcement.

1. For the health, safety, and welfare of the people of the Town, it shall be unlawful for any person or entity who is the owner, manager, tenant, lessee, occupant, or other person having any legal or equitable interest or right of possession in or to any real property, motor vehicle, or other personal property to cause, permit, maintain, promote, facilitate, fail to prevent, or allow the creation or maintenance of a nuisance on such property, or to permit property to become a nuisance. Enforcement of a violation of this ordinance, and administration, supervision or performance of actions taken pursuant to this ordinance shall be through the Town Code Enforcement Officer with review by the Zoning Hearing Examiner, Planning and Zoning Commission, and Governing Body as specified in this ordinance.
2. Notwithstanding all the penalties for abating nuisances that may be imposed by applicable law, if any person or entity fails to abate any nuisance or allows dumping, unsightly storage, nuisance vegetation, nuisance vehicles, dilapidated buildings, or any other nuisance to remain on property that is determined to be hazardous to the health, safety and welfare of the community, the Town may take the action set forth herein to abate the nuisance, charge the owner, and impose a lien on the property.

8.15.030 Notice of nuisance.

Any town marshal, officer or otherwise duly authorized representative, 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 or occupant or tenants~~, which limit shall be not less than two days nor more than 30 days after 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. When all possibilities are exhausted in contacting the property responsible party, violation notice shall be posted on the front door. [Ord. 2006-02 § 2; prior code § 8-6-3]

8.15.35 Inspections.

The Code Enforcement Officer shall be authorized, under the provisions of this ordinance, to inspect any premises in the Town for the purpose of enforcing and assuring compliance with the provisions of this ordinance subject to the following procedural requirements:

- A. The Code Enforcement Officer may conduct inspections from right-of-way and may assess the compliance of the subject property. Consent from any owner is not required.
- B. Upon the request of the Code Enforcement Officer, any owner may voluntarily provide access to Town staff to all interior portions of any property in order to assess compliance.

8.15.040 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~~ the Code Enforcer officer or otherwise duly authorized representative shall file a ~~civil and/or criminal~~ complaint charging violation of this chapter with the municipal ~~hearing examiner and/or Magistrate~~ court demanding that the ~~owner of the property, or the occupant thereof, or both,~~ be held to answer ~~to the court~~ to the hearing examiner and/or Magistrate Court for the violation of this chapter. [Ord. 2006-02 § 3; prior code § 8-6-4]

8.15.45 Notice to Abate.

A. The Code Enforcement Officer, upon observing any nuisance as described in **MTC 18.15.020** of this chapter, shall issue a written notice to the owner. The notice may be served personally, by certified mail to the property's address, or posted on the property. The notice to abate a nuisance shall contain the following:

1. An order to abate the nuisance within ten (10) days or other specified reasonable time but not longer than 30 days.
2. The location of the nuisance, if the nuisance is stationary.
3. A description of the nuisance and ordinance citation of the nuisance.
4. A statement of corrective action necessary to abate the nuisance.
5. A statement that if the nuisance is not abated as directed, the matter will be

considered by a Zoning Hearing Examiner, and the Town will take appropriate action, including abatement of the nuisance, imposition of the associated costs on the owner, and pursuit of a lien on the property.

6. A statement of a right to hearing before a Zoning Hearing Examiner.

B. If the violation is not fully remedied by the stated deadline, the Code Enforcement Officer may refer the matter to a Zoning Hearing Examiner. The Zoning Hearing Examiner shall conduct a quasi-judicial hearing following appropriate notice to the owner by certified mail to the property's address, or posting on the property. After considering the evidence presented at the hearing, the Zoning Hearing Examiner shall determine whether a nuisance requiring abatement exists. In the event the Zoning Hearing Examiner concludes that a nuisance exists, it shall:

1. Issue an order to abate the nuisance within ten (10) days or other specified reasonable time, specifying the corrective action necessary to abate the nuisance.
2. Include in the order notice to the owner that in the event the nuisance is not abated as directed, the Town will proceed to abate the nuisance, impose the costs of abatement on the owner, and impose a lien in the amount of the costs on the property.
3. Include in the order notice to the owner of the right to appeal the decision to the Planning and Zoning Commission or Board of Trustees within fifteen (15) days. Consideration for appeals to the Planning and Zoning Historical Appropriateness Commission will be determined as mentioned on Mesilla Town Code 18.06.080 Duties-Powers.

8.15.48 Right of Hearing

Any person receiving notice to abate a nuisance may request a hearing before the Zoning Hearing Examiner on such matter within fifteen (15) days from the date of filing the notice. Any notice of abatement served by the Town shall advise the person allegedly committing the nuisance of their right to request a hearing before the Zoning Hearing Examiner. The Zoning Hearing Examiner shall consider the facts of the case and this ordinance in its decision. The Zoning Hearing Examiner's decision may be appealed to the Planning and Zoning Commission within thirty (15) days.

8.15.050 ~~Removal of nuisance.~~ Abatement by Town

~~In the event that a person is convicted of violating this chapter and still refuses to remove the junk, trash or refuse, the municipality may enforce this section in any manner consistent with law. Should the person refuse or fail to pay the assessment, the municipality shall collect such assessment as provided by law. [Prior code § 8-6-5]~~

Upon the failure of the person to comply with an order to abate a nuisance in accordance with this title, **MTC 18.15.45**, the Town may proceed without notice to abate such nuisance itself. The Code Enforcement Officer shall proceed to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof and serve the statement of cost upon the person who failed to comply.

8.15.55 Town's cost to declared lien.

Any and all costs included by the Town in the abatement of a nuisance, or for amounts or fines assessed or arising under this ordinance, shall constitute a lien against the property upon which the nuisance was removed, which lien shall be filed pursuant to NMSA 1978, § 3-36-. The Town shall be further empowered to foreclose the lien. The Town shall also be entitled to release any lien it holds upon payment of good and valuable consideration, whether such amount is paid by the owner(s) or any other individual or entity.

A. Alternative methods of abatement.

1. This ordinance is not intended to affect other legal remedies available to the Town or affected property owners to address a nuisance.
2. A civil action to abate a public nuisance may be brought in any court of competent jurisdiction against any person or entity who creates, performs, or maintains a public nuisance.
3. A lien against real estate may be foreclosed in the same manner that mortgages or other liens against real estate are foreclosed with like rights of redemption. A lien against personal property may be foreclosed in the same manner security interests are foreclosed. At the trial of any case foreclosing any lien, the recitals of the lien or other evidence of indebtedness shall be received in evidence as prima facie true. In the foreclosure of any lien created by municipal ordinance or under authority of law, a reasonable attorney's fee shall be granted by the court as part of the reasonable costs of the case.

4. The Town may file a criminal complaint for public nuisance in the appropriate court as provided by New Mexico law.
5. Pursuant to NMSA 1978, § 30-8-8(B), as it may be amended, a civil action to abate a public nuisance may be brought, by verified complaint in the name of the state without cost, by any public officer or private citizen, in the district court of the county where the public nuisance exists, against any person, corporation or association of persons who shall create, perform or maintain a public nuisance.

8.15.58 Appeals

A. Appeal to Planning and Zoning Commission.

1. Any person aggrieved by the decision of a Zoning Hearing Examiner may appeal to the Planning and Zoning Commission, provided that a written application for appeal is filed with the Town Clerk within thirty (30) days after the decision.
2. An application for appeal shall be based on a claim that the true intent of this ordinance has been incorrectly interpreted, the provisions of this ordinance do not fully apply, or the requirements of this ordinance are satisfied.
3. The appellant, the appellant's representative, the Code Enforcement Officer, and any person whose interests are affected shall be given an opportunity to be heard.
4. The Planning and Zoning Commission shall affirm, modify or reverse the decision of the Code Enforcement Officer, Zoning Hearing Examiner at its discretion.
5. A decision of the Planning & Zoning Commission shall be in writing and provide findings and conclusions based on the evidence presented at the hearing before it.
6. The appellant shall pay any applicable costs associated with filing any such appeal. All fees are non-refundable.

B. Appeals to the Governing Body.

1. Any person aggrieved by a decision by the Planning & Zoning Commission acting under this ordinance may appeal to the Town's Governing Body by submitting a written notice of appeal within thirty (15) days of the Commission's final decision. The notice of appeal shall be filed with the Town Clerk.
2. Appeals to the Governing Body shall be based on the record before the Planning &

Zoning Commission. The Planning & Zoning Commission shall prepare and provide the record on appeal to the Governing Body.

3. Notice of the appeal and hearing on the appeal shall be provided to those persons who participated in the hearing before the Planning & Zoning Commission.
4. The Governing Body shall affirm, modify or reverse the decision of the Code Enforcement Officer or Zoning Hearing Examiner or P & Z Commission at its discretion.
5. A decision of the Governing Body Planning & Zoning Commission shall be in writing and provide findings and conclusions based on the record.
6. The appellant shall pay any applicable costs associated with filing any such appeal. All fees are non-refundable.

B. Appeals to District Court. A decision of the Governing Body may be appealed to district court in accordance with NMSA 1978 § 39-3-1.1.

8.15.060 Injunctions.

The town marshal, or otherwise duly authorized representative, 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. [Ord. 2006-02 § 4; prior code § 8-6-6]

18.15.70

The Mesilla Town Code is current through Ordinance 2021-03, passed December 30, 2021.

Disclaimer: The town clerk's office has the official version of the Mesilla Town Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

Town Website: <http://www.mesillanm.gov/>

Town Telephone: (575) 524-3262

[Code Publishing Company](#).