

CITY OF RIO COMMUNITIES

ORDINANCE NUMBER 2013-14

DATE: 10-8-13

PERSONAL PROPERTY

TABLE OF CONTENTS

<u>Section</u>	<u>Description</u>	<u>Page</u>
7-4-1	DECLARATION	2
7-4-2	PURPOSE OF ORDINANCE: APPLICABILITY	2
7-4-3	DEFINITIONS	3
7-4-4	PENALTY FOR INTENTIONALLY OR NEGLIGENTLY ALLOWING PROPERTY TO BE USED IN THE COMMISSION OF CRIMES OR ILLEGAL ACTIVITIES	5
7-4-5	DISPOSITION OF PERSONAL PROPERTY CONSTITUTING A PUBLIC NUISANCE WITHIN THE MEANING OF THIS ORDINANCE	5
7-4-6	DISPOSITION OF REAL PROPERTY CONSTITUTING A PUBLIC NUISANCE WITHIN THE MEANING OF THIS ORDINANCE, OTHER THAN PROPERTY DEEMED A HOUSE OF PROSTITUTION	7
7-4-7	DISPOSITION OF PROPERTY DEEMED A HOUSE OF PROSTITUTION	10
7-4-8	SEVERABILITY	11
7-4-9	REPEAL	11
7-4-10	EFFECTIVE DATE	11

7-4-1 DECLARATION. The Governing Body of the City of Rio Communities declares that personal property used for or involved in criminal or illegal activity, and real property located within the City limits or Rio Communities, which on more than one (1) occasion within a one (1) year period has been the site illegal or criminal activity, are injurious to the safety and welfare of the City, and therefore constitute a Public Nuisance within the meaning of this Ordinance.

7-4-2 PURPOSE OF ORDINANCE: APPLICABILITY.

A. The purpose of this Ordinance is to:

1. Establish penalties for owners or persons with a legal interest in of property who allow the use of personal or real property to become a Public Nuisance within the meaning of this Ordinance;
2. Establish procedures for the disposition of personal property found to be a Public Nuisance within the meaning of this Ordinance;
3. Establish the procedures for the disposition of real property located within the City that has been found to be a Public Nuisance within the meaning of this Ordinance.

B. This Ordinance applies to:

1. All real property, located within the municipal limits of the City, which, on more than one (1) occasion within a period of one (1) year, has been the site of criminal or illegal activity;
2. Personal property, wherever located, which has been involved in criminal or illegal activities committed in the City ; and
3. Owners or persons with a legal interest of such real or personal property, as that term is defined in this Ordinance, who have allowed, negligently, recklessly or intentionally, such crimes or illegal activities to occur.
4. This Ordinance does not apply to property involved in or used for or the site of the commission of misdemeanors, except as otherwise specified, with respect to property made subject by law to the provisions of the New Mexico Forfeiture Act.

This Ordinance does not supersede or replace any existing Ordinance or Statute dealing with the confiscation, seizure, closure or disposal of property involved in or used for criminal or illegal activity, but is meant to supplement such existing law, and should be read in conjunction with any such law.

7-4-3 DEFINITIONS.

- A. **Criminal or illegal activity** is any activity defined as such in the criminal ordinances of the City or Valencia County, as amended from time to time, or the criminal statutes of the State of New Mexico.
- B. **Personal property** includes tangible or intangible personal property.
- C. **Real property** includes any legal or equitable interest in such property.
- D. **Closure, close or to close**, with respect to property the subject of this Ordinance, means to seize that property, remove all owners, tenants, occupants and other persons and animals from real property, motor vehicle, or personal property, or any portion thereof, and to lock, board, bar and otherwise prohibit all entry, access, and use thereof, except such access and use as may be specifically ordered by a court order or competent authority, for purposes as may be specified by such authority or order, and to vest the sole right of possession and control of such property in the City for a limited period of time as set by court order or by resolution of the Governing Body. For motor vehicles, closure includes seizure and impoundment.
- E. **Owner** is any person who has any interest in property, either legal or equitable, which allows said person to control the use of said property.
- F. Negligently allowing the criminal or illegal use of one's property is the failure to take such care to prevent the use being made of said property, as a reasonably prudent and careful person would take under similar circumstances.
- G. Recklessly allowing the criminal or illegal use of one's property is a disregard of, or indifference to, the consequences of such use of one's property, where the owner knows or reasonably should know of the use being made of the property.
- H. The Forfeiture Statute is NMSA 30-37-1 ET. Seq.
- I. Property made subject to the Forfeiture Statute, as of the drafting of this Ordinance, includes the following:
 - 1. Bows and arrows used in illegal hunting, NMSA 17-2-20.0;
 - 2. Any instrument or vehicle used in violation of the Cultural Properties Act, NMSA 18-6-9.3;
 - 3. Vehicle used or intended for use in shooting at or from a motor vehicle, NMSA 30-3-8.1;
 - 4. Firearms used or in possession in violation of the Unauthorized

Possession of a Handgun Act, NMSA 30-7-2.3.;

5. Property used in violation of the Unauthorized Recording Act, NMSA 30-16B-1.;
 6. Mistreated animals, NMSA 30-18-1.1;
 7. Property used in violation of the Gambling Act, NMSA 30-19-10.;
 8. Substances and property used or possessed in violation of the Controlled Substance Act, the Imitation Controlled Substance Act, and the Drug Precursor Act, NMSA 30-1-35, NMSA 31A-1 et seq., NMSA 31B-17.;
 9. Any interest in property acquired in violation of the Racketeering Act, NMSA 42-1 et seq.;
 10. Computer equipment and products used or possessed in violation of the Computer Crimes Act, NMSA 30-45-7.
- J. **Governing Body** means the City of Rio Communities Council.
- K. **Motor vehicle** means any device of conveyance whether or not currently operational capable of moving itself or of being moved from place to place upon wheels or tract or by water or air, whether or not intended for the transport of persons or property, and includes any place therein adapted for overnight accommodation of persons or animals or for the carrying on of business.
- L. **Perpetrator** of a criminal or illegal activity is a person who commits such act or by whose agency such act is committed.
- M. **Probable cause** is the existence of facts and circumstances that warrant a person of reasonable caution to believe that an offense was or is being committed.
- N. **Person** includes any individual, group, association, corporation, or entity recognized at law.
- O. **With respect** to the term person, as used herein, the singular includes the plural, and masculine includes feminine, where such applies.
- P. **City** is the City of Rio Communities.

7-4-4 PENALTY FOR INTENTIONALLY OR NEGLIGENTLY ALLOWING PROPERTY TO BE USED IN THE COMMISSION OF CRIMES OR ILLEGAL ACTIVITIES.

- A. A rebuttable presumption arises that an owner of property, even though not himself the perpetrator, who has been given notice under this Ordinance, that his personal property has been used for, or has been involved in, or his real property located within the corporate limits of the City, has been the site of a crime or illegal activity, is, for the purposes of this Ordinance, for any such activity occurring within one (1) year of such notice, an owner who recklessly, negligently or intentionally allows such activity.
- B. Any owner of property who, even though not the perpetrator of a crime or illegal activity committed within the City , recklessly, negligently or intentionally allows his property to be used for, or involved in, or the site of such crime or illegal activity, violates this Ordinance. Every day on which such violation exists shall constitute a separate violation of this Ordinance.
- C. Any owner of property who violates this Ordinance, shall, upon conviction, be subject, in addition to any other penalties prescribed by law, to penalties prescribed by law for violation of an Ordinance of the City.

7-4-5 DISPOSITION OF PERSONAL PROPERTY CONSTITUTING A PUBLIC NUISANCE WITHIN THE MEANING OF THIS ORDINANCE.

- A. Personal property that is subject to the provisions of the New Mexico Forfeiture Act, or which, from time to time, is made subject to said Act, shall be disposed in accordance with that Act.
- B. Personal property not specifically made subject to the provisions of the New Mexico Forfeiture Act shall be disposed as follows:
 - 1. Motor vehicles or other property found to be a Public Nuisance within the meaning of this Ordinance, and not made or adapted solely for the commission of the criminal or illegal activity giving rise to such finding, may, at the discretion of the Chief of Police or his designee, be seized and impounded if not already in Police custody as a result of arrest. Within five (5) business days of any such seizure, the Chief of Police shall inform the City Attorney of such seizure and the grounds therefore. The City Attorney shall, within thirty (30) days of such notice, either file an action in the appropriate court against the perpetrators of said crime or illegal activity, retaining said property for use in judicial proceedings as deemed necessary, or release the

property to the owner. Release of said property shall not of itself bar any future filing of any action with respect to the said crime or illegal activity within any applicable statutory period of limitation. If retained for use at trial or other legal proceeding, said property shall remain in City custody unless the owner posts a bond, effective until judgment is rendered in such trial or otherwise ordered by the court or agreed to by the City Attorney:

- a. Payable upon default to the City;
 - b. In the sum of \$15,000.00 or such amount as acceptable to the City Attorney to insure the property's availability for trial or proceeding;
 - c. With sureties acceptable to the City Attorney;
 - d. Conditioned that the property be made available as necessary for trial or other legal proceedings as required by the City Attorney, and that the property will not be used or permitted to be used for any criminal or illegal activity that would violate this Ordinance.
2. Personal property retained for use at trial or other legal proceeding shall be disposed in accordance with the judgment rendered or by other order of the court. In any such trial or legal proceeding, the City Attorney may demand, as part of any judgment that said personal property be closed for a period of at least six (6) months from the date of judgment unless a bond be posted payable to the City in an amount equal to the estimated value of the property as determined by the City Attorney, or \$15,000.00, whichever is greater, payable upon default to the City, effective for the period of closure, and conditioned that the property not be used for or involved in any further activity in violation of this Ordinance.
3. Any personal property released to its owner or any holder of an interest in the property, pursuant to the judgment of court, decision of the City Attorney, or agreement, shall require that all towing, storage and maintenance fees incurred by the City during the closure of the property have been paid, that any judgment rendered in favor of the City for fees and costs associated with the legal proceedings have been paid, and that a complete and unconditional release of the City and all its employees and agents for or associated with the closure of said property be executed. In the event that the owners and holders of legal or equitable interests, or any of them, fail, neglect, or refuse to notify the City of their intent to meet the requirements of release herein stated within thirty (30) days of receiving notice of the final

judgment of the court and the availability of the property for release, and who fail to redeem the said property within ninety (90) days of such notice of intent to redeem, then the property shall be declared abandoned and shall be disposed in accordance with the City Ordinances relating to abandoned property.

4. Personal property made, adapted or intended solely for use in the commission of criminal or illegal activities, as determined by the Chief of Police, although not covered by the New Mexico Forfeiture Act, shall be closed and disposed in accordance with the provisions of that Act.
5. Nothing in this Ordinance shall require the City to release property lawfully obtained by City Police Department as part of a pending criminal investigation or prosecution.

7-4-6 DISPOSITION OF REAL PROPERTY CONSTITUTING A PUBLIC NUISANCE WITHIN THE MEANING OF THIS ORDINANCE, OTHER THAN PROPERTY DEEMED A HOUSE OF PROSTITUTION.

- A. Owners of real property within the corporate limits of the, that is the site of criminal or illegal activity other than prostitution, if not the perpetrators of such activity, shall be given notice by the Chief of Police that:
 1. A crime or illegal activity has occurred on or at said property; and that, if appropriate, a citation has been issued against the occupants and perpetrators of said activity;
 2. That the acts committed constitute grounds to declare the property a Public Nuisance within the meaning of this ordinance if any recurrence of criminal or illegal activity occurs within one (1) year of notice; and
 3. That declaration of Public Nuisance against the property may result in penalties as provided by law against said owners and possible destruction or closure of the property, as provided herein. A copy of this Ordinance will be provided with any such notice. A citation against owners of property who are perpetrators satisfies the requirements of notice under this subsection.
- B. No action shall be taken against any real property located within the municipal limits of the City unless and until the Chief of Police in consultation with the City Attorney has established that probable cause exists that the said property has been the site, on more than one (1) occasion within a one (1)

year period, of criminal or illegal activity, except prostitution, and thus constitutes a Public Nuisance within the meaning of this Ordinance. The Chief of Police and the City Attorney may, without limitation, utilize citations issued to the occupants of said property, verified complaints, reports of other municipal agencies, information from other law enforcement agencies, prior indictments or convictions of the occupants of said site, or police surveillance, or any other lawful means to establish probable cause, and shall as a part of such procedure, determine the owners of said property, as that term is defined herein, using any reasonable means to establish same.

- C. Real property which has been established to be a Public Nuisance within the meaning of this Ordinance, other than a house of prostitution, shall be disposed of as follows:
1. The residents and owners will be given notice by the Chief of Police that the named property is a Public Nuisance within the meaning of this Ordinance. Such notice will require that the owners must immediately take steps voluntarily to abate such use and that the owners detail in writing within thirty (30) days an abatement plan itemizing: (a) The actions taken and to be taken to abate and insure continued abatement of such Public Nuisance; (b) the time frame within which the abatement will occur; and (c) the name, address and telephone number of the person supplying the said information. In addition, any plan must include a provision for the posting of a performance bond in an amount equal to the estimated value of the property but in no case less than \$25,000.00 made payable upon default to the City, with sureties acceptable to the City, and conditioned upon the faithful performance of the abatement plan as finally accepted. The Chief of Police and the City Attorney will determine jointly the suitability and reasonableness of any such abatement plan and inform the owner or his representative of such decision. If the proposed abatement plan is unsuitable, the Chief of Police and the City Attorney jointly will detail actions that must be taken or time frames that must be observed, or both if appropriate, to make the plan acceptable and so notify the owner. A denial of suitability will require an immediate resubmission addressing the requirements outlined. A second denial or failure to resubmit will be treated as a non-response and dealt with under subsection 4 below.
 2. If the plan is determined to be acceptable, the owner will be so notified, and surveillance will continue to monitor adherence to the accepted plan. Non-recurrence of criminal or illegal activity at or on the property for a period of one (1) year following the completion of an approved abatement plan will constitute fulfillment of the abatement plan and remove the property from further obligation under this Ordinance and release the performance bond.

3. Failure to perform the plan as accepted during the period of the plan ant the one (1) year period following completion will constitute a breach of the plan allowing forfeiture of the bond. In addition, the property will be made subject to the provisions of subparagraph 4 below.
4. Failure of the owner or his representative to respond within the time allowed, or failure of the owner to address, satisfactorily, the requirements of abatement provided to him following a notice of unsuitability of a proposed abatement plan, or any breach of an approved abatement plan prior to its fulfillment, following review and concurrence by the City Attorney, shall be reported to the Governing Body by the Chief of Police, with a request that civil in-rem legal proceedings against the property be initiated.
5. Civil in-rem legal proceedings shall be initiated, at the direction of the Governing Body, by the City Attorney in accordance with the procedures contained in the New Mexico Statutes and Rules of Court for proceedings against real property. The suit shall be against the property and any owner seeking a judgment that the property is a Criminal Public Nuisance within the meaning of this Ordinance and shall include a demand that the property be closed during the pendency of the suit subject to a release bond satisfactory to the City . Upon judgment by the court that the property is a Criminal Public Nuisance, in addition to any other remedy, the court shall either: (a) order the destruction of buildings or other structures or appurtenances causing the property to be a Public Nuisance with any cost of destruction to be paid by the owners of said property or be a lien against the property; or (b) order the closure of the property for a period of not less than one (1) year or more than three (3) years from date of judgment, unless a bond is posted effective for the period of closure:
 - a. Payable to the City;
 - b. In a sum equal to the estimated value of the property but not less than \$25,000.00;
 - c. With sureties acceptable to the court;
 - d. Conditioned that the property will not be used or permitted to be used for any crime or illegal activity that would violate this Ordinance
 - e. Further conditioned that any breach of the terms of the

bond will allow closure of the property with no provision for bond, for the remaining period of closure included in the judgment.

- f. Any legal proceeding against the property subject to this subsection shall include a requirement that the defendants, during any closure imposed in said proceeding, whether before or after judgment, shall provide for the full maintenance of said property, including any animals, vegetation, sanitation, utilities, insurance, and security.
- g. At the end of any such closure period, the real property shall be released to the owners only upon the payment of all expenses incurred by the City for or associated with its closure, and the payment of any civil judgments awarded to the City , for its legal fees and costs. In addition, the property shall only be released upon the execution by all holders of any interest in and to said property of an unconditional release of the City, its employees and agents, for any liability for or associated with the closure of the property.
- h. In addition to the remedies provided in this subsection, the City shall have a lien against the real property involved for any civil judgment awarded in favor of the City including any costs, fees, and maintenance and upkeep expenses incurred during the period when such property was under the control of the City.

7-4-7 DISPOSITION OF PROPERTY DEEMED A HOUSE OF PROSTITUTION.

- A. Property that is found to be a house of prostitution, as that term is defined in NMSA 30-9-1 et seq., shall be disposed in accordance with the provisions of NMSA 30-8-8- .1.
- B. The owners of property which has been found to be a house of prostitution, and who are not themselves the operators of said house, shall be made aware of the provisions of NMSA 30-9-9 regarding the owners' remedies against lessees conducting such activities.

7-4-8 SEVERABILITY.

The provisions of this Ordinance shall be deemed to severable, and should any Section , paragraph, or provisions hereof declared by the courts to be unconstitutional or invalid such holdings shall not affect the validity of this Ordinance as a whole or any part hereof, other than the part so declared to be unconstitutional or invalid.


7-4-9 REPEAL.

Section 7-4, Sections 7-4-1-1, 7-4-1-4, 7-4-1-6, 7-4-1-7 and 7-4-1-9 of the City of Rio Communities Code of Ordinances are hereby repeals. The adoption of this Ordinance, however, shall not affect nor prevent any pending or future prosecution of, or action to abate, any existing violation of said Sections 7-4-1-1, 7-4-1-4, 7-4-16, 7-4-1-7 and 7-4-1-9 if the violation is also a violation of the provisions of this Ordinance.

7-4-10 EFFECTIVE DATE.

This Ordinance shall become effective five (5) days after its Adoption, Approval and Publication as provided by law.

APPROVED, ADOPTED AND SIGNED this 8th day of October, 2013 by the Governing Body of the City of Rio Communities.



Mark Gwinn, Mayor
City of Rio Communities

ATTEST:



Mary Lee Serina, Mayor Pro Tem
City of Rio Communities