

**TOWN OF EDGEWOOD
STATE OF NEW MEXICO
ORDINANCE NO. 2023-03**

AN ORDINANCE REPEALING SECTION 36 OF ORDINANCE NO. 2022-007; ADOPTING PUBLIC NUISANCE ABATEMENT PROCESS; REQUIRING VACANT OR FORECLOSED PROPERTIES TO REGISTER WITH THE TOWN; AND AUTHORIZING USE OF CANNABIS REGULATION ACT/NUISANCE ABATEMENT FUND.

WHEREAS, Section 36 of Zoning Ordinance 2022-07 provides an alternative remedy for the most serious nuisances that involves the Governing Body declaring nuisance abatement by resolution, a process that is the purview of Town staff, as it involves inspections, issuing notices, and assessing zoning compliance;

WHEREAS the Town of Edgewood wishes to repeal Section 36 and adopt an alternative public nuisance abatement process;

WHEREAS, public nuisances that occur on unsupervised vacant properties can be difficult to resolve due to property owners who are difficult to locate or contact, and the ability of the Town of Edgewood to fulfill its obligations to its citizens is enhanced when Town staff have current contact information for persons or entities holding an interest in vacant or foreclosed properties in Edgewood;

WHEREAS, the Town of Edgewood wishes to allow a zoning hearing examiner with experience in land use and law to provide review and decision for abatement, allowing appeals of abatement decisions to be heard by the Planning and Zoning Commission; and

WHEREAS the Town established through Resolution No. 2023-09, the Cannabis Regulation Act/Nuisance Abatement Fund to be utilized by the Planning and Zoning Department to abate nuisance and blight;

NOW THEREFORE, be it ordained by the Governing Body of the Town of Edgewood, New Mexico that:

SECTION 1. Repeal of Section 36 of Zoning Ordinance 2022-07

Section 36 of Zoning Ordinance 2022-07 is hereby repealed. All remaining provisions of Zoning Ordinance 2022-07 remain in effect.

SECTION 2: Public Nuisance Abatement and Vacant or Foreclosed Property Registration

A. Intent and purpose.

1. This ordinance is intended to promote the general health, safety, and welfare of the people of the Town by providing for the abatement of public nuisances. Public nuisances that occur on unsupervised vacant properties can be more difficult to resolve

because property owners are often difficult to locate, and vacant properties often involve changes in ownership, responsibility, or control of the property. The ability of the Town to fulfill its obligations to its citizens is enhanced when the Town has current contact information for persons or entities holding an interest in vacant or foreclosed properties in Edgewood.

2. The purpose of this ordinance is to abate public nuisances caused by vacant or foreclosed properties, and to provide a registration process for vacant or foreclosed properties to better enable code enforcement to abate said nuisances. The actions provided in this section are designed to abate public nuisances by removing the property, both real and personal, from criminal and unsafe use, to make property owners vigilant in preventing public nuisances on, in, or using their property, and responsible for the lawful use of their property by tenants, guests, and occupants, and to deter public nuisances.
- B. Definitions. For purposes of this ordinance, the following words and phrases are defined as follows:
1. "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.
 2. "Foreclosed property" means a property for which any mortgage or tax foreclosure with respect to such property has been initiated.
 3. "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.
 4. "Nuisance" means anything that is created or maintained on any 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. The term also includes any inoperable, partially dismantled or wrecked vehicle of any type upon any commercial, industrial or residential property.
 5. "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.
 6. "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.

7. "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 and final decisions on abatement of public nuisances. The Zoning Hearing Examiner 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 Commission.

C. 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.

D. Vacant or Foreclosed Property Registration.

1. The current owner of a vacant or foreclosed property shall register the property, by providing the information required below in subsection 2., and paying the filing registration fee in accordance with the Governing Body resolution establishing fees. The owner shall register the property within ten (10) days of notice to register. If the owner fails to register within ten (10) days, this shall constitute a first offense and the Code Enforcement Officer shall issue a written warning to register. If the owner fails to register within ninety (90) days of the written warning, this shall constitute a second offense and the owner shall be fined the second offense fee in accordance with the fee schedule set forth in subsection 6. Failure to register or take any action required by this Ordinance after the second offense shall empower the Town to record a lien as to the property and to foreclose any such lien in accordance with provisions applicable to such liens, as described in section I of this ordinance. The Town shall not be required to provide any notice prior to the filing of such a lien.

2. The property shall be registered in accordance with the provisions of this section by completing and filing a form provided by the Planning and Zoning Department, which shall include the following information:
 - a. A description of the premises including either a street address or a legal description.
 - b. The names and addresses of any and all owners known to the party completing the form.
 - c. The names and addresses of any lien interest holders known to the party completing the form, including but not limited to the property manager's information.
 - d. A telephone number for the individual completing the form, or, in the case of an entity, the name and telephone number for a local contact person or property manager.
 - e. The applicable filing fee in accordance with the Governing Body resolution establishing fees. An equivalent renewal fee shall be due and payable on each year of the anniversary of the initial filing for such period as the property's status is vacant or foreclosed.
 - f. If the property has structures expected to be demolished, a demolition plan stating the proposed time frame for demolition and if an assessment or consideration has been made that the structures are of historical or cultural significance.
 - g. If the property has structures to be returned to appropriate occupancy or use, a detailed rehabilitation plan shall be required. Such plan shall not exceed three hundred sixty-five days (365) from the date of the building permit submittal. The Code Enforcement Officer grants an extension upon the filing of a request by the party registering the property detailing the facts justifying the extension. Any repairs, improvements or alterations to the property must comply with any applicable zoning, housing, historic preservation or building codes. The Code Enforcement Officer will conduct an inspection of progress towards the rehabilitation plan every three (3) months until the rehabilitation is complete. Failure to complete the rehabilitation plan within three hundred sixty-five (365) days, plus any extensions granted, will result in a penalty in accordance with subsection 6., which penalty shall be retroactively applied to the date when the Town received the initial registration for the vacant or foreclosed property.
3. The filing party shall comply with all applicable laws and codes as per current building codes, fire codes, sanitary codes, and local ordinances and regulations concerning safety and maintenance. The owner shall notify the Code Enforcement Officer of any changes in information supplied as part of the vacant or foreclosed property registration

within thirty (30) days of any such change. If the plan or timetable for the vacant or foreclosed property is revised in any way, the revisions must be submitted in writing to and approved by the Code Enforcement Officer.

4. Failure of the owner to maintain the property, as set forth in subsections 2. and 3. above, that requires the Town to take any remedial action shall be grounds for revocation of the approved plan and shall be subject to any applicable penalties and filing and foreclosure of lien provided for under this ordinance.
5. At the time of any change in ownership, the new property owner(s) shall file a new registration within thirty (30) days of transfer of any ownership in the property. The property owner(s) must notify any new property owner(s) of the demolition and/or rehabilitation plan in place and include completion of the rehabilitation plan as a condition of the purchase of the property. The new property owner(s) shall comply with any existing approved plan(s) until any revised plan(s) meet the approval of the Code Enforcement Officer.

6. Fees. Fees shall be as follows:

Registration and Renewal:	\$100.00
Failure to Register:	\$500.00
First Offense:	written warning
Second Offense:	\$500.00
Failure to complete rehabilitation:	\$100.00 per day after 365 days
Appeal:	\$300.00

- a. Any fees which are required or due pursuant to the provisions of this section D. shall be paid at the time of filing of the registration document provided by the Planning and Zoning Department.
 - b. All fees are nonrefundable.
 - c. Failure to file the registration or pay applicable fees shall empower the Town to file a lien on the property in the amount due pursuant to this section, as described in section I of this ordinance.
 - d. Any fees due shall be paid in full prior to the issuance of any building permits, except in the case of a demolition permit.
 - e. If a delinquent fee is not paid at the time of the transfer of the property, such failure shall in no way impair the legality and enforcement of the fee and associated lien filing.
7. Expenses. The owner of a vacant or foreclosed property will be billed by the Town for any and all reasonable costs incurred by the Town for emergency response, boarding

and securing, or otherwise mitigating public safety concerns created by the vacant or foreclosed property. Failure by the owner to pay for billed expenses associated with their vacant or foreclosed property within ninety (90) days of the date of billing shall empower the Town to record a lien as to the property and to foreclose any such lien in accordance with section I. The Town is not required to provide any notice prior to filing of such a lien.

8. Yearly reports. The Planning and Zoning Department shall send to the Governing Body a list of all properties in the Town declared vacant or foreclosed under this section D. annually. Such list shall indicate whether registration of the property pursuant to this section D. has occurred as well as the status of any fees due.
9. Violations and penalties. Any person violating the registration provisions of this section D. or providing false information in the process of registering the property shall be subject to monetary penalties set forth in this subsection 6.

E. Inspections.

1. 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.
 - c. Any owner at the time of such request shall be advised of the owner's right to deny access and request procurement by the Town of a search warrant.
 - d. Should any owner refuse such access, the Code Enforcement Officer shall apply for a warrant from a court of competent jurisdiction to grant search warrants.
2. If, at the time of the inspection, the Code Enforcement Officer deems that the electrical, plumbing, or mechanical systems pose health or safety hazards and require additional inspection by a registered code inspector in that discipline, the owner shall be responsible to obtain and pay for the required inspection.

F. Notice to abate.

1. The Code Enforcement Officer, upon observing any nuisance as described in section C of this ordinance, 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:

- a. An order to abate the nuisance within ten (10) days or other specified reasonable time.
 - b. The location of the nuisance, if the nuisance is stationary.
 - c. A description of the nuisance and ordinance citation of the nuisance.
 - d. A statement of corrective action necessary to abate the nuisance.
 - e. 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.
 - f. A statement of a right to hearing before a Zoning Hearing Examiner.
2. 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:
- a. 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.
 - b. 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.
 - c. Include in the order notice to the owner of the right to appeal the decision to the Planning and Zoning Commission within fifteen (15) days.
3. In the event no appeal is taken to from an order to abate the nuisance, the Town may proceed with abatement of the violation in accordance with section H.

G. Right to 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 (30) days.

H. Abatement by Town.

Upon the failure of the person to comply with an order to abate a nuisance in accordance with section F, 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.

I. Town's cost declared lien.

Any and all costs incurred 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, § 3-36-1. 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.

J. 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. For cases in the Town's Municipal Court, 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.

K. Appeals.

1. Appeal to Planning and Zoning Commission.

- a. 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.
- b. 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.
- c. 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.
- d. The Planning and Zoning Commission shall affirm, modify or reverse the decision of the Code Enforcement Officer, Zoning Hearing Examiner at its discretion.
- e. 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.
- f. The appellant shall pay any applicable costs associated with filing any such appeal. All fees are nonrefundable.

2. Appeals to the Governing Body.

- a. Any person aggrieved by a decision of 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 (30) days of the Commission's final decision. The notice of appeal shall be filed with the Town Clerk.
- b. 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.

- c. 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.
- d. 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.
- e. A decision of the Governing Body Planning & Zoning Commission shall be in writing and provide findings and conclusions based on the record.
- f. The appellant shall pay any applicable costs associated with filing any such appeal. All fees are nonrefundable.

3. 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.

L. Authorizing Use of the Cannabis Regulation Act/Nuisance Abatement Fund

1. Resolution No. 2023-09 established a revolving fund dedicated to the cost and expense for the Planning and Zoning Department to initiate actions with intent to reduce such conditions known as the Cannabis Regulation Act/Nuisance Abatement Fund (herein referred to as the "Fund").
2. The Planning and Zoning Department may utilize the Fund for actions to abate nuisances in accordance with this ordinance.
3. The Planning and Zoning Department may utilize the Fund to take legal measures, such as lien filing and collection, establishment of fines, or invoicing of fees for the cost of abatement.

PASSED, APPROVED, AND ADOPTED on this 25th day of April 2023.


Audrey J. Jaramillo, Mayor, CMO

Attest:


Nina R. McCracken, Clerk

