

City of Moriarty

ORDINANCE NO. 0-2006-03

AN ORDINANCE RELATING TO NUISANCES; HEALTH AND SANITATION

**BE IT ORDAINED BY THE GOVERNING BODY OF THE MUNICIPALITY OF THE
CITY OF MORIARTY, NEW MEXICO:**

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SECTION 1. NUISANCES DEFINED

§ 1.1 FINDINGS AND PURPOSE.

- A. It is the purpose of this article to promote the health, safety and welfare of the citizens of the City by protecting property from blighting and deteriorating conditions by establishing minimum standards governing the maintenance, appearance and conditions of all residential and non – residential premises.
- B. It is the purpose of this article to enhance the beauty and quality of the environment; promote the conservation of natural resources; prevent the spread of disease and the creation of nuisances; and to provide for the abatement of public nuisances.
- C. In the interest of the health, safety and welfare of City residents, it is necessary to prohibit the accumulation of litter, refuse, rubbish or other solid waste, weeds, inoperable or abandoned vehicles on property, and water wastage within the corporate limits of the City by declaring such as public nuisances.
- D. This article shall apply to all buildings, structures and lands within the City without regard to use, the date of construction, improvement or alteration.
- E. This article shall be known as the City of Moriarty Nuisance Ordinance.

§ 1.2 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

1. **ABANDONED VEHICLE.** A motor vehicle which has remained for more than seventy – two (72) hours in a condition described by one of the following;
 - a. Without license plates or a temporary registration conspicuously displayed thereon; or
 - b. With license plates which have an expiration date more than ninety (90) days prior to the date of inspection.
2. **AIRBOURNE PARTICULATE MATTER.** Material discharged into or suspended in the air in finely – divided form, i.e., sand or dust.
3. **AIRCRAFT.** Any contrivance now known or hereafter invented, used or designated for navigation or for flight in the air including helicopters, lighter – than – air conveyances.
4. **AUTHORIZED PRIVATE RECEPTACLES.** A litter storage and collection receptacle as required in Chapter O-1998-5 of this code.

5. **BLIGHT** or **BLIGHTED**. Unsightly conditions including the accumulation of debris; fences characterized by holes, breaks, rot, crumbling, cracking, peeling or rusting; landscaping that is dead, characterized by uncontrolled growth or lack of maintenance, or is damaged and any other similar conditions of disrepair and deterioration regardless of other properties in the area.
6. **CITY ENGINEER**. The chief administrative engineer of the City or that engineer's designee.
7. **CODE ENFORCEMENT OFFICER**. An authorized City official, duly appointed or commissioned by the Mayor, including but not limited to a City police officer, and City fire chief or designee.
8. **DEBRIS**. Any substance of little or no apparent economic value, which may be present in accumulation in excess of six (6) inches in height and ten (10) inches in diameter, including but not limited to deteriorated lumber, old newspapers, furniture parts, stoves, sinks, cabinets, household fixtures, refrigerators, car parts, abandoned or neglected equipment, or the scattered remains of items.
9. **DECIBEL**. A logarithmic and dimensionless unit of measure often used in describing the amplitude of sound. Decibel is denoted as dB.
10. **DETERIORATION**. The condition or appearance of a building, structure or part thereof, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or other evidence of physical decay, neglect or lack of maintenance.
11. **DIGGING**. Excavating or turning up the soil with a spade or other hand tool.
12. **DUST**. Very fine particles that become airborne due to wind, traffic and other human activity.
13. **EXCESSIVE NOISE**. Any sound of such intensity or duration as to be detrimental to the life, health, or welfare of any individual of normal sensitivities, or which either steadily or intermittently annoys, disturbs, injures, or endangers the comfort, repose, peace or safety of any individual or normal sensitivities. **EXCESSIVE NOISE** in violation of this article shall be determined by the appropriate **CODE ENFORCEMENT OFFICER** as provided in Section 1.4 (D).
14. **ENCLOSED STRUCTURE**. A structure at least six (6) feet in height or tall enough to eliminate the public's view, including neighbors, of the interior and meets all applicable building codes.
15. **EXPOSED TO PUBLIC VIEW**. Any premises, or any building or any part thereof, which may be lawfully viewed by the public or any member thereof, from a sidewalk, street, alleyway, open – air parking lot or from any adjoining or neighboring premises.

16. **EXTERIOR OF THE BUILDING.** Those portions of a building, which are exposed to public view and the open space of any premises outside of any building erected thereon.
17. **EXTERIOR PROPERTY AREAS.** Open space on the premises, on adjoining property and all sidewalks under the control of the owners or operators of the premises.
18. **EXTERMINATION.** The control or elimination of insects, rodents or other pests by recognized programs of integrated pest management which includes sanitation, harborage control and the use of approved pesticides and other legal pest elimination methods.
19. **FENCES, SCREEN WALLS, or RETAINING WALLS.** Self – standing structures designed to provide semi – privacy, security or bank retention between grade separations.
20. **FIRE HAZARD.** Any thing or act which may increase or may cause any increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by the Fire Inspector, or which may obstruct, delay or hinder the prevention, suppression of extinguishment of fire.
21. **FIRE INSPECTOR.** City of Moriarty Fire Department personnel authorized to exercise the powers and duties required in administering and enforcing the City's Fire Code.
22. **GARBAGE.** Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking or consumption of food.
23. **GRADING.** Leveling the soil and the removal of vegetation.
24. **HANDBILL.** Any printed, reproduced or written matter, or any sample or device which advertises any business, commercial establishment, person, meeting, exhibition, theatrical performance or other activity, for the purpose of either directly or indirectly promoting the interest thereof; or which, while containing reading matter other than advertising matter, is predominantly and essentially for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser for distributor, however, "newspaper," as defined herein, is not to be construed to be included within the definition of **HANDBILL**.
25. **HARDSHIP.** For purposes of this article **HARDSHIP** shall mean any economic, psychological, or physical difficulty in compliance during the proscribed period of abatement, as determined in the reasonable discretion of the appropriate **CODE ENFORCEMENT OFFICER**.
26. **HAZARDOUS WASTE.** Any chemical compound, mixture, substance or article which is identified or listed by the United States Environmental Protection Agency or appropriate agency of the state, except that, for the purpose of this article, hazardous waste shall include household waste.

27. **HISTORIC OR SPECIAL INTEREST VEHICLE.** A vehicle of any age that because of its significance, is being collected, preserved, restored or maintained by a hobbyist as a leisure pursuit. See NMSA 1978, § 66-11-2 (1975)
28. **HEALTH HAZARD.** The presence of any items that adversely impact or jeopardize the well – being or health of an individual. Such items include, but are not limited to, human waste, medical or biological waste, sharps, gaseous, or combustible materials, radioactive waste, dangerous or corrosive chemicals or liquids, flammable or explosive materials, friable asbestos, offal and decay matter.
29. **INFESTATION.** The apparent presence of unpleasant, damaging or healthful insects, rodents, reptiles or pests.
30. **INOPERATIVE or INOPERABLE VEHICLE.** Any motor vehicle that by reasons of dismantling, disrepair or other cause is incapable of being propelled under its own power.
31. **JUNK.** Any discarded or useless material including but not limited to glass, rags, paper, metal, furniture, etc. that is broken, worn – out or fit to be discarded.
32. **LANDFILL.** An area of land or an excavation in which solid wastes are placed for disposal and that employs an engineered method that minimizes environmental hazards and meets the requirements of the state solid waste regulations.
33. **LITTER.** Decaying or non – decaying solid and semi – solid wastes, including but not limited to both combustible and non – combustible wastes, such as paper, trash, cardboard, waste material, cans, yard clippings, wood, glass, bedding, scrap paving material, discarded appliances, discarded furniture, dry vegetation, trees, which may harbor insect or rodent infestations or may become a fire hazard, and piles of earth mixed with any of the above foreign objects, including inoperable vehicles.
34. **LOT.** A parcel or tract of land, platted and placed on the Torrance County Clerk's record in accordance with applicable laws and ordinances, generally as a portion of a subdivision intended for development purposes, including public right – of – way.
35. **MOTOR VEHICLE.** Any wheeled vehicle that is self – propelled or intended to be self – propelled.
36. **NEWSPAPER.** Any newspaper of general or local circulation as defined by general law; any newspaper duly entered with the Post Office Department of the United States, in accordance with federal statute or regulation; any newspaper filed and recorded with a recording officer as provided by general law; and in addition thereto, shall mean and include any periodical or current magazine regularly published with not less than four (4) issues per year, and sold to the public.

37. **NON – BENEFICIAL USE OF WATER.** Includes but is not restricted to the following:
- a. Landscape water applied in such a manner, rate or quantity that it regularly overflows the landscaped area being watered and runs onto adjacent property or public right – of – way.
 - b. Landscape water that leaves a sprinkler, sprinkler system or other application device in a manner or direction as to spray onto adjacent property or public right – of – way.
 - c. Washing down of hard surfaces such as parking lots, aprons, pads, driveways or other areas when water is applied in an excessive quantity to flow from that surface onto adjacent property or the public right – of – way.
38. **OCCUPANT.** A person, persons or legal entity that, through rights of ownership or tenancy, has possession or the use and enjoyment of the subject real property.
39. **OWNER.** A person, persons or legal entity listed as the current titleholder as recorded in the official records of the Torrance County Assessor’s Office.
40. **PREMISES.** A lot, plot or parcel of land including the structures thereon.
41. **PUBLIC NUISANCE.** Creating, performing or maintaining anything affecting without lawful authority any number of citizens which is either injurious to public health, safety or welfare, or interferes with the exercise and enjoyment of public rights including the right to use public property.
42. **PUBLIC PLACE.** Any and all rights – of – way, and any and all public parks, spaces, grounds and buildings.
43. **PUBLIC RIGHT – OF – WAY.** Paved or unpaved streets and adjoining public real property, alleys, drainage, gutter or other public easements and lined or unlined drainage channels which comprise the municipal storm drainage system.
44. **REFUSE.** Includes, but is not limited to all putrescible and nonputrescible solid wastes (except body wastes) including ashes, waste or unwholesome material of any kind, street cleanings, dead animals, abandoned motor vehicles, vehicle parts and solid market and industrial wastes.
45. **RESPONSIBLE PARTY.** An occupant, lessor, lessee, manager, licensee or other person having control over a structure or parcel of land; and in the case where the demolition of a structure is proposed as a means of abatement, any lienholder whose lien interest is recorded in the official records of the Torrance County Assessor’s Office.
46. **RUBBISH.** Includes, but is not limited to all non – putrescible solid wastes such as paper, cardboard, cans, wood, yard clippings, leaves, glass, bedding, crockery and other similar materials.

47. **SCREENED AREA, EXTERIOR.** An area separated by a permanent non – flexible device to completely conceal one element of a property from other elements or from adjacent or contiguous property. Examples include, but are not limited to, fencing six (6) feet in height that is made from solid brick or chain link fencing with opaque slats.
48. **SOLID WASTE.** Includes, but is not limited to any garbage, litter, refuse, rubbish, special waste, white goods, debris and other discarded materials originating from residential, commercial or industrial sources.
49. **SPECIAL WASTE.** Includes, but is not limited to any solid waste which requires special handling or a special sign such as, but not restricted to, incinerator ash, infectious and noninfectious medical waste, petroleum products, hazardous waste, white goods and tires.
50. **TILLAGE.** Cultivating, plowing or turning over the soil.
51. **VEGETATION.** Plant life of any kind.
52. **WATER.** Water provided through the system through which the City receives and distributes its water or any extensions thereof, as well as through private wells and delivery systems.
53. **WATER WASTE.** The non – beneficial use of water that is supplied by any water supply system within the municipality. *See also* definition of **NON – BENEFICIAL USE OF WATER.**
54. **WEEDS.** Shall mean all rank, noxious, poisonous, harmful, unhealthful vegetation, or any growth whatsoever of an offensive nature or which is deleterious to the public health and safety. For example, Pigweed (*lamranthus retroflexus*), Russian thistle (*salsola pestifer*), or ragweed (*ambrosia* spp.), commonly referred to as tumbleweeds. For the purpose of this article, **WEEDS** shall also mean plants that, by reason of abandonment, lack of care or lack of maintenance, choke out growth of other plant material in the area, and dead, dying or unattended plant life, named or unnamed, which is abandoned or overgrown.
55. **WHITE GOODS.** Includes, but is not limited to any major appliances, such as washing machines, clothes dryers, hot water heaters, stoves and refrigerators.

§ 1.3 UNLAWFUL ACTIVITY.

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.

§ 1.4 NUISANCES DECLARED.

In the interest of inhabitants of this municipality, it is necessary to prohibit the accumulation of litter, refuse, rubbish or other solid waste, weeds, inoperable vehicles on property, and wastewater within the corporate limits of the City by declaring the accumulation a nuisance. The following are hereby declared to be a public nuisance:

- A. *Unoccupied premises.* It shall be unlawful 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 to permit or cause to remain in or about his / her premises any solid waste, weeds, motor vehicles not in operating condition, wastewater or any conglomeration of residue thereof, which emits odors or serves as a feeding or breeding place for flies, insects or rodents. The accumulation of building materials, pipes, lumber or boxes may be maintained on the premises if the accumulation is evenly piled and stacked for a reasonable length of time to be determined by the appropriate code enforcement officer.
- C. *Hazardous premises.* It shall be unlawful for any person to permit in or about his / her 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.
- D. *Excessive noises.* It shall be unlawful for any person make, cause or permit in or about his / her premises all unnecessary, unauthorized or excessive noises and annoying vibrations, including animal noises, which due to its intensity or duration either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others.
 - 1. Excessive noise in violation of this section shall be determined by the appropriate code enforcement officer as follows:
 - a. If in a residential area between the hours of 9:00 p.m. and 7:00 a.m. the following day the sound is plainly audible at a distance of thirty (30) feet from the property boundary, or exceeds 50 dB as measured by a decibel meter at the same distance;
 - b. If in a residential area between the hours of 7:00 a.m. and 9:00 p.m. the sound is plainly audible at a distance of fifty (50) feet from the property boundary, or exceeds 55 dB as measured by a decibel meter at the same distance;
 - c. If in a commercial or industrial area between the hours of 9:00 p.m. and 7:00 a.m. the following day the sound is plainly audible at a distance of fifty (50) feet from the property boundary, or exceeds 60 dB as measured by a decibel meter at the same distance;

- d. If in a commercial or industrial area between the hours of 7:00 a.m. and 9:00 p.m. the sound is plainly audible at a distance of sixty (60) feet from the property boundary, or exceeds 70 dB as measured by a decibel meter at the same distance.
 2. The appropriate code enforcement officer may also consider the following standards in making a determination if the noise is in violation of this article, which include but are not limited to:
 - a. Whether the sound is audible to an officer in a motor vehicle with all the windows closed;
 - b. The volume of the noise;
 - c. The intensity of the noise;
 - d. Whether the nature of the noise is usual or unusual;
 - e. Whether the origin of the noise is natural or unnatural;
 - f. The proximity of the noise to residences;
 - g. The nature and zoning of the area within which the noise emanates;
 - h. The density of the inhabitation of the area from which the noise emanates;
 - i. The time of day or night the noise occurs;
 - j. The duration of the noise;
 - k. Whether the noise is recurrent, intermittent or constant; and
 - l. Whether the noise is produced by a commercial or non – commercial activity.
 3. This section shall not in any way restrict or limit sounds emanating from organized and sponsored outdoor recreational, school, or athletic events that are part of a regularly scheduled or permitted program of activity; or sounds from safety, warning or emergency signals and devices.
 4. In the event of undue hardship to comply with this section, an application for a permit to exceed the noise restrictions in this section may be obtained from the appropriate code enforcement officer
- E. *Obnoxious odors.* It shall be unlawful for any person to permit in or about his / her premises all disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes, which give rise to the emission or generation of such odors and stenches.

- F. *Obstruction of fire protection equipment.* No person shall place or keep any post, fence, vehicle, growth, trash storage or other material or thing near any fire hydrant, fire department connection or fire protection system control valve that would prevent the equipment or hydrant from being immediately discernable or in any other manner deter or hinder the firefighters from gaining immediate access to the equipment or hydrant.
- G. *Accumulation of solid waste.*
1. It shall be unlawful for any person to allow any solid waste to accumulate upon premises, owned, leased, rented or occupied by him / her during intervals between collection thereof, except in the manner herein provided.
 2. It shall be unlawful to deposit 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 container as provided herein.
- H. *Solid waste receptacles.* All solid waste receptacles shall be maintained in a clean and sanitary condition by the owner or person using the receptacle and the receptacles shall be located only in places as shall be readily accessible for removing and emptying the same, but shall not be placed in a place or position as may constitute a nuisance or obstruction to vehicular or pedestrian traffic.
- I. *Outdoor vehicle storage; prohibited acts; exceptions.* It is unlawful for any person, firm, business or corporation 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, not properly registered, or inoperative motor vehicle, or any parts of a motor vehicle, except under the circumstances making an exception to this prohibition as provided for in Section 2.4, below.

SECTION 2. PROPERTY MAINTENANCE

§ 2.1 BUILDING AND STRUCTURE EXTERIORS.

- A. All exposed exterior surfaces shall be maintained so as to be free of deterioration that is a threat to health and safety, or shall not otherwise present a deteriorated or blighted appearance. Examples of the deterioration and blight include, but are not limited to:
1. Stucco or paint that is deteriorated, indicated by peeling, flaking, cracked, blistering or mildew, resulting in exposed, bare unprotected surfaces over more than thirty percent (30%) of the exterior.
 2. Window screening that is not maintained in good condition.

- B. All structures on the premises shall be safe, structurally sound and shall be maintained so that they do not constitute a hazard, blight or condition of disrepair. Examples of hazards, blight or conditions of disrepair includes, but are not limited to, leaning fences, fences that are missing numerous slats or blocks, graffiti, peeling paint, deterioration of paint or materials and rotting or damaged materials.

§ 2.2 EXTERIOR PREMISES AND VACANT LAND.

- A. *General land.* All land, including exterior premises and vacant land, whether improved or unimproved, shall be maintained free from any accumulation of debris or blight, which includes, but is not limited to, graffiti on walls, fences or mail boxes, accumulation of litter, rubbish, refuse, waste material, bottles, paper, glass, cans, organic or inorganic material, inoperable or disabled vehicles, piles of mixed material, dry vegetation, rags, empty barrels, boxes, crates, packing cases, mattresses, bedding, lumber not neatly piled, lumber stored in front yards, scrap iron, tin and other metal not neatly piled, or anything whatsoever in which insects, rodents, snakes or other harmful pests may live, breed or multiply or which may otherwise create a health hazard.
- B. *Streets, alleys and sidewalks.* The owner and any other responsible party in control of any land abutting a sidewalk, alley or street shall maintain the sidewalk, alley or street area in the same manner as provided in subsection A, above. The areas required to be maintained are as follows:
1. Any portion of a street, which has been opened for public use, between the curb line and the abutting property line including sidewalks; provided that the owner, lessee or other person in control of any land utilized for single – family residential shall only be required to maintain public right – of – way areas not adjacent to collector or arterial streets.
 2. One – half (1/2) of the width of abutting alleys from the property line to the center of the alley.
- C. *Stored materials.* It shall be unlawful to accumulate and store building material, lumber, boxes, cartons or other containers, machinery, scrap metal, junk, raw material, fabricated goods and other items in a manner as to constitute a public nuisance or rodent harborage.
- D. *Exterior insect, rodent and animal control.* All premises shall be kept free from insect and rodent infestation and other noxious pests. The provision shall not require action to disturb the natural activity of bees, rabbits, or other insects and animals where the activity is not a danger or nuisance to any resident or residents of the area and where other applicable legal requirements are met.
- E. *Drainage.* All premises shall be maintained so as to prevent the accumulation of stagnant water when the water causes a hazardous or unhealthy condition or become a breeding area for insects. This does not apply to City – approved retention basins or similar conditions.

§ 2.3 VEGETATION.

- A. All exterior property areas which have been altered from their natural state or developed in any way, shall be kept free from dry vegetation, tumbleweeds, weeds, bushes and tall grass and tress which present a visual blight upon the area or which may harbor insect or rodent infestations, and dry vegetation which may likely become a fire hazard or result in a condition which may threaten the health and safety or the economic welfare of adjacent property owners or occupants. This requirement shall apply to the road right – of – way that abuts the property line on any side of the lot.

- B. The premises shall be free from weeds higher than twelve (12) inches tall. All vegetation shall be kept from becoming overgrown and unsightly so as to constitute a public nuisance to any adjoining property.

- C. *Removal by Owner.* It shall be the duty of the owner or occupant of the premises to cut the weeds and remove the cuttings or any accumulation of weeds or cause the weeds to be cut and cause the cuttings of any accumulation of weeds to be removed as often as necessary in order to comply with the provisions as set forth in this section.

The approved methods of controlling weeds shall be mowing, cutting, digging, or other methods designed to remove the weeds but not disturb other vegetation or unnecessarily disturb the soil. The grading and tillage of lots is prohibited unless written permission from the appropriate City official has been obtained.

- D. *Removal by City.* If the owner or tenant of the premises is properly notified pursuant to the notice procedures set forth in Section 3, below, and fails to comply within the proscribed period for abatement, or in those cases where the owner cannot be determined and compliance with the notice has not occurred within the proscribed period for abatement, the appropriate code enforcement officer shall cause such weeds to be cut and the cuttings or any accumulation of weeds to be removed if such accumulation creates a fire hazard or a nuisance.

In the event there is non – compliance, the appropriate code enforcement officer is authorized to immediately cause such weeds to be cut and the cuttings or accumulation of weeds removed, and the owner billed the actual costs plus a one hundred dollar (\$100.00) administration fee. If the bill remains unpaid after thirty (30) days, double the cost of the cutting and / or removal of weeds, administration fee, plus all other penalties or costs allowed by law in connection therewith shall, in the manner proscribed by law, become a lien upon the property from which such weeds were removed.

- E. The City shall be responsible for weed control on dedicated open space, drainage rights – of – way and improved rights – of – way of arterial and collector roads, unless responsibility has otherwise been delegated, e.g., via a development agreement, development plan, zone map amendment, and the like.

§ 2.4 INOPERABLE OR ABANDONED VEHICLES.

- A. *General Prohibition.* Outdoor storage of inoperable or abandoned vehicles or parts thereof on the premises is hereby prohibited. Vehicles shall not be used for storage or other purposes unless enclosed within a building or garage on the premises.
- B. *Exceptions.* The general prohibition against outdoor storage of inoperable or abandoned vehicles or parts thereof does not apply under the following circumstances:
1. Inoperable or abandoned vehicles may be stored outdoors on the premises if within an enclosed structure so as not to be visible from any adjoining property or public road; or
 2. In an area where an activity is within the contemplated purposes of a duly licensed business with the appropriate zoning; or
 3. Any person, being owner or tenant, may store, permit to be stored or allow to remain upon his residential premises, any dismantled, partially dismantled or inoperative motor vehicle, or parts thereof, for a period not to exceed one (1) month, if the motor vehicle is registered in the resident's name; or
 4. One (1) inoperable or abandoned vehicle may be stored upon property within the City when not within an enclosed structure, if fully covered and placed in the side or back yard. Any vehicle must be at least five (5) feet from any property line and at least five (5) feet from any permanent structure; or
 5. When vehicles are owned and actively being restored by the owner or tenant of the premises as follows:
 - i. Pursuant to NMSA 1978, § 66-11-1 (1975), the City recognizes the importance of constructive leisure pursuits through responsible participation in the hobby of collecting, preserving, restoring and maintaining motor vehicles of historic and special interest.
 - ii. A historic or special interest motor vehicle is being actively restored if within the last thirty (30) days the owner has spent at least ten (10) hours of labor in repairing, rebuilding or reconstruction of the motor vehicle.
 - iii. The burden shall be on the owner of vehicle to prove that it is being actively restored which may include receipts for the purchase of parts and supplies during the last thirty (30) days that have been installed on the vehicle, or a permit for vehicle restoration issued by the appropriate code enforcement officer.

- iv. Any person may obtain a permit for the restoration of a motor vehicle from the appropriate code enforcement officer. The permit shall specify the type of vehicle to be restored, the location of the vehicle and the time requested for restoration, provided that in no event shall the time allowed for restoration exceed twenty four (24) months, with the opportunity to re – apply for an extension of an additional twenty four (24) months at no charge. No more than two (2) permits per location may be issued and outstanding at any one time.
- C. Any person violating this section may, in the event of hardship, request an extension of this article’s compliance period by a written request to the appropriate code enforcement officer.
- D. This section shall not be construed to permit the parking or placement of inoperable or abandoned motor vehicles on any public street. Placement of inoperable vehicles on any public street is subject to enforcement by the City of Moriarty Police Department.
- E. *Removal by Owner.* Upon proper notice and opportunity to be heard, pursuant to the notice procedures in Section 3, below, the owner of the abandoned, wrecked, dismantled, or inoperable vehicle and the owner or occupant of the private property on which the vehicle is located, either or all of them, shall be responsible for its removal. If the abandoned, wrecked, dismantled or inoperative vehicle is located on public property, the owner of the vehicle or his / her agent shall be responsible for its removal.
- F. *Removal by City.* If removal and disposition is performed by the City, the owner or occupant of the private property where the vehicle is located shall be liable for the expenses incurred, or, if the circumstances are such, the owner of the vehicle left on private property. If the violation described in the notice issued pursuant to this section has not been remedied within the time period of compliance specified in this article, or if a notice requesting hearing is timely filed, a hearing is had and the existence of the violation is affirmed by the municipal court judge, the City shall have the right to remove the motor vehicle from the premises. It shall be a petty misdemeanor for any person to interfere with, hinder, or refuse to allow such person to enter upon the private property or public property for the purpose of removing a motor vehicle under this article.
- G. *Notice.* The notice issued pursuant to this section shall contain the request for removal within a reasonable period of time no less than two (2) days and no greater than thirty (30) days, and the notice shall advise that upon failure to comply with the notice to remove, the City or its designee, which may include a wrecker service, shall undertake such removal with the cost of removal to be levied against the owner or occupant of the property, or if the circumstances are such, the owner of the vehicle left on public property or his / her agent. Within forty – eight (48) hours of the removal of such vehicle the City shall give notice to the registered owner of the vehicle, if known, and also to the owner or occupant of the private property, if applicable, from which the vehicle was removed, that the vehicle has been impounded and stored for violation of this article. The notice shall give the location where the vehicle is stored and the costs incurred by the City for removal, which shall be paid by the vehicle’s registered owner.

§ 2.5 LITTERING.

- A. *Litter in public places.* No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the City except in public receptacles, in City approved receptacles for collection or at a State approved sanitary landfill.
- B. *Placement in receptacles; prevention of scattering.* Persons placing litter in public receptacles or in authorized private receptacles shall do so in a manner as to prevent it from being carried or deposited by the elements upon any public or private place. Receptacles shall not be placed or positioned in a manner that may constitute a public nuisance or obstruction.
- C. *Throwing or distributing handbills or newspapers.*
 - 1. *Handbills at public places.* No person shall throw or deposit any handbill in or upon any public place within the City. However, it shall not be a violation of this article for any person to hand out, without charge to the receiver thereof, any handbill to any person willing to accept it in public places.
 - 2. *Distributing handbills on vehicles.* No person shall throw, attach or deposit any handbill in or upon any vehicle.
 - 3. *Distributing handbills or newspapers at private premises.*
 - a. Handbills may be place or deposited in or upon inhabited private premises by these methods:
 - 1. Handing or transmitting handbills directly to the occupant of the property then present in and upon the premises; or
 - 2. Placing and depositing the handbills in a way as to secure the handbills from being blown or drifting about the premises or upon public places.
 - b. No handbill or newspaper shall be deposited upon or to any private premises if either of the following applies:
 - 1. The private premises are temporarily or continually uninhabited or vacant.
 - 2. If required by any resident not to do so, a sign no larger than one (1) square foot with letters a minimum of one (1) inch in size, must be placed on the premises in a conspicuous position near the front entrance. The sign must contain the words "No Solicitation," "No

Distribution,” “No Trespassing,” or equivalent wording to indicate that the occupants of the premises do not desire to be molested or have their right of privacy disturbed, or to have the handbills left upon the premises.

- c. These provisions shall not apply to agencies of federal, state, county or city government, and regulated public utilities with respect to communications or distribution of materials with their customers concerning official business, e.g., distribution of all articles upon which United States postage has been paid, notices of violation, utility bills, telephone directories or package delivery notices.
- D. *Dropping litter from aircraft.* No person in an aircraft shall throw out, drop or deposit any litter.
- E. *Posting or affixing notices and posters.* It shall be unlawful to post or affix any notice, poster or other paper or device calculated to attract the attention of the public to any lamp post, public utility pole, street median, public right – of – way, tree in the public right – of – way, any emergency equipment such a fire hydrants, or upon any public structure except as may be authorized or required by law.
- F. *Unlawful dumping or disposal of solid waste.* It shall be unlawful to dispose of solid waste in any manner other than as specified in Chapter O-1998-5 of this code.
 - 1. *Unlawful to dump.* It shall be unlawful for any person to place or dump solid waste or debris in any arroyo, streambed, drainage ditch, public fountain or any public body of water within the boundaries of the City.
 - 2. *Dumping on property.* It shall be unlawful for any person to place or dump solid waste or debris on any property within the City whether owned by the person or not.
 - 3. *Vacant lots or land.* Vacant lots or lands that have been the subject of repeated dumping shall be secured to prevent future occurrences of dumping. Methods of securing vacant lots or lands must be approved and may include permanent fencing, ditch or berm, or placement of four (4) foot high posts at four (4) foot intervals. Signs stating, “no dumping” shall be erected in accordance with applicable ordinances on vacant lands that have been subject to dumping on more than one (1) occasion.
- G. It is unlawful for any person, except City employees or agents in the performance of their official duties, to scavenge, rummage through, collect or scatter garbage from any container placed or provided for the collection of garbage.
- H. *Transportation of solid waste.* No person shall drive or move any vehicle within the City that has been loaded with solid waste unless the solid waste is covered or securely loaded in a manner to prevent littering.

§2.6 DUST CONTROL.

- A. No person shall discharge from any source whatsoever the quantities of airborne particulate matter that may cause injury, detriment, nuisance or annoyance to the public without taking reasonable precautions to prevent particulate matter generated by the activity from becoming airborne.
- B.
 - 1. No person or person in control of any property shall disturb, move onto or remove soil from any area without utilizing every reasonable method, such as watering or the use of erosion control fencing, to limit the airborne particulate to the boundaries of the property.
 - 2. Where grading permits are required the grading permit must be obtained before any soil or vegetation is disturbed. Dust control measures shall conform to drainage control, flood control and erosion control policies, standards, criteria and procedures established by the City. It shall be considered a violation of this section and grounds for cancellation of the grading permit if the work schedule, pollution prevention measures, and other relevant items are changed from those specified in the permits, unless the permittee has first obtained written approval of the City.

§ 2.7 WASTEWATER.

- A.
 - 1. *Water waste.* After the effective date of this article, no person, business, firm, corporation, or municipal facility or operation shall waste, cause or permit to be wasted or applied to non – beneficial uses, as defined in this article, any water furnished by any water supply system, public or private, within the City.
 - 2. *Fugitive water flow.* After the effective date of this section, no person, firm, corporation, municipal or other government facility or operation shall cause or permit the flow of excess fugitive water onto the adjacent property or public right – of – way.
- B.
 - 1. Waste or non – beneficial uses of water shall include, but are not limited to, the following:
 - a. Landscape water applied in such a manner, rate, or quantity that it regularly overflows the landscaped area being watered and runs onto or seeps into adjacent property or public right – of – way;
 - b. Landscape water that leaves a sprinkler, sprinkler system, or other application device in such a manner or direction as to spray onto adjacent property or public right – of – way; and

- c. Washing down of vehicles or hard surfaces such as parking lots, aprons, pads, driveways, or other surfaced areas when water is applied in an excessive quantity to flow from that surface onto adjacent property or the public right – of – way.
2. Waste or non – beneficial uses of water shall not include:
- a. Flow resulting from fire fighting or routine inspection of fire hydrants or from training activities;
 - b. Water applied as a dust control measure as may be required;
 - c. Water applied to abate spills of flammable or otherwise hazardous materials;
 - d. Water applied to prevent or abate health, safety or accident hazards when alternate methods are not available;
 - e. Water which reaches or flows onto adjacent property or public right – of – way when caused by an act of nature;
 - f. Flow resulting from a routine inspection or maintenance of water supply system within the municipality;
 - g. Flow resulting from commercial or individual residential applications on an occasional basis, such as washing of vehicles, boats, driveways, sidewalks or municipal flushing of streets;
 - h. Water used in the course of installation or maintenance of traffic – control devices; or
 - i. Water used by contractors or utilities in saw – cutting of pavement, compaction or other use required under terms of their contract.
3. Fugitive water shall not include:
- a. Storm run – off;
 - b. Flow resulting from temporary water supply system failures or malfunctions. This flow shall be exempted only for the first forty – eight (48) hours after notification of the failure or malfunction is given to the responsible party by the City; and
 - c. Flow resulting from other municipal emergencies.

SECTION 3. NOTICE AND ENFORCEMENT PROCEDURES

§ 3.1 ADMINISTRATION AND ENFORCEMENT.

- A. Except as otherwise provided in this article, the appropriate code enforcement officers shall enforce this article, which shall include the inspection of premises, the issuance of notices and the issuance of a citation pursuant to this article.
- B. It shall be unlawful and a violation of this article for the owner, builder, agent, lessee or occupant of any premises within the City to allow litter, refuse, rubbish, or other solid waste, weeds, inoperable or abandoned vehicles on property, and water wastage within the corporate limits of the city, or to allow blighting and deteriorating conditions to exist, or debris to accumulate upon the property within the City, or to allow materials to accumulate and become in any way hazardous or injurious to public health or to obstruct pedestrian and vehicular traffic. Any responsible party who causes, permits, facilitates or aids or abets any violation of any provision of this article shall be subject to enforcement as stated herein.
- C. Any person violating the provisions of this article, or neglecting to comply with any orders issued pursuant to any section herein:
 - 1. For a first offense, the violator shall be issued a written warning pursuant to the notice procedures in § 3.2 below;
 - 2. For a second offense, the violator shall be issued a citation through the Moriarty Municipal Court, and be subject to a fine not to exceed twenty – five dollars (\$25.00);
 - 3. For a third offense, the violator shall be issued a citation through the Moriarty Municipal Court, and be subject to a fine not to exceed one hundred dollars (\$100.00);
 - 4. For a fourth and subsequent offenses, the violator shall be issued a citation through the Moriarty Municipal Court, and be subject to a fine not to exceed one hundred dollars (\$100.00), and / or imprisonment not to exceed thirty (30) days.
- D. After the first written notice of a violation has been issued to the violator, any subsequent offense, occurring within a twelve (12) month time period shall result in a citation as provided in Subsection C, above.
- E. Each day on which such a violation continues to occur after the time for abatement and / or removal of the nuisance has expired, shall be considered a separate and subsequent offense.

- F. Upon the failure of any person to abate a violation of this article, the City may require the removal or mitigation of the violation at the expense of the person who caused the violation or the person in control of a property. Any person who causes damages to public property shall be liable for the damage. The method for collection of costs to the City for removal or mitigation of the nuisance may include, but shall not be limited to, a lien pursuant to NMSA 1978, § 3-36-1 *et seq.*
- G. All fines assessed and collected as a result of violations associated with water waste shall be allocated to supplement the City's water conservation program.

§ 3.2 NOTICE AND COMPLAINT.

- A. Any appropriate code enforcement officer, upon observing any violation of this article, 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, which limit shall be not less than two (2) days or more than thirty (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.
- B. Any person who has been issued a written warning for violation of this article may submit a written request to the appropriate code enforcement officer for a reasonable extension of time of the period for abatement and / or removal of the nuisance, not to exceed an additional thirty (30) days, which may be granted in the reasonable discretion of the appropriate code enforcement officer.
- C. In the event the owner or occupant of the property where the nuisance violation of this article exists, after receiving a written warning pursuant to Subsection A, above, has failed within the prescribed time to abate the nuisance, then any appropriate code enforcement officer shall file a complaint charging violation of this article with the Moriarty 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 article.
- D. Any person receiving notice of an order to abate a nuisance may request a hearing before the Moriarty Municipal Court on such matter within the proscribed period of abatement as provided in the notice. Any notice of abatement served by the City shall advise the person allegedly committing the nuisance of his / her right to request a hearing before a Municipal Court.
- E. Any person aggrieved by a violation or apparent violation of this article may file a written complaint with the appropriate code enforcement officer, who shall investigate the complaint and take action to have the violation penalized and removed, if a violation is found to exist.

§ 3.3 ABATEMENT; REMOVAL OF NUISANCE.

- A. In the event that a person is convicted of violating this article and still refuses to remove the litter, refuse, rubbish, other solid waste, weeds, inoperable or abandoned vehicles on property, and abate water waste and blighting and deteriorating conditions on the premises, the City may enforce this section in any manner consistent with law.
- B. Should the person refuse or fail to pay the assessment, the City shall collect the assessment as provided by law.
- C. Any and all costs incurred by the City in the abatement of a nuisance may constitute a lien against the property upon which such nuisance existed, which lien shall be filed, proven and collected as provided for by law. Such lien shall be notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied.

§ 3.4 INJUNCTIONS.

The appropriate code enforcement officer, when a nuisance exists as set forth in this article, 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.

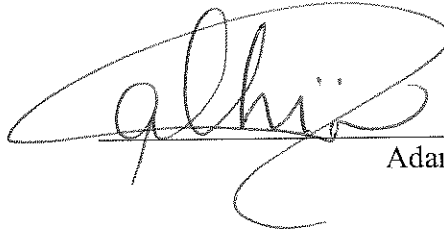
§ 3.5 CONFLICTING PROVISIONS.

Any City ordinance or part of an ordinance, which is in conflict with the provisions of this article, is hereby superseded to the extent that this article provides more specific standards or stricter standards of compliance.

SECTION 4. EFFECTIVE DATE AND TIME FOR COMPLIANCE

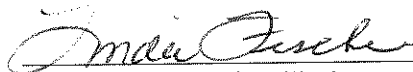
This article shall become effective immediately upon passage and signing, pursuant to NMSA 1978, § 3-17-5. The enforcement of the provisions of this article will be delayed for thirty (30) days from the effective date in order to provide the citizens of Moriarty the opportunity to bring any existing violations of this article to compliance.

PASSED, APPROVED AND ADOPTED ON THIS 12th DAY OF SEPTEMBER, 2006.

A handwritten signature in cursive script, appearing to read 'Adan Encinias', written over a horizontal line.

Adan Encinias, Mayor
City of Moriarty

ATTEST:

A handwritten signature in cursive script, appearing to read 'Linda Fischer', written over a horizontal line.

Linda Fischer, City Clerk