

**NO PACKET MATERIAL FOR THIS
ITEM**

EXECUTIVE SESSION

**SANTA FE COUNTY
LEGAL DEPARTMENT
MEMORANDUM**

To: The Board of County Commissioners
Katherine Miller, County Manager

From: Stephen C. Ross, County Attorney *SR*

Date: April 11, 2013

Re: Authorization to Publish Title and General Summary of an Ordinance
Creating Definitions, Rules of Interpretation, General Rules of
Construction, Adopting the 2-13 Codification of Ordinances By and For
the County of Santa Fe, New Mexico

In this fiscal year's budget, the legal department was authorized to complete the task of codifying County ordinances. The project is almost complete; all that remains is: (i) to enact an ordinance that provides general rules of interpretation and other general matters (proposed ordinance attached); (ii) final publication of the codification; and (iii) publication of the codification in a searchable form on the internet.

Once the project is complete, the public will be able to view all County ordinances on the internet in a format that most cities and counties now use. The public will not only be able to locate County ordinances by using subject matter criteria, they will be able to search for words and phrases of interest within the County ordinances. The codification will make County ordinances easier to use, more accessible to the general public, and more convenient for staff and elected officials who will be able to access the compilation at their desks.

The first step in completing the process is adoption of the attached ordinance. This ordinance provides general rules of construction, common definitions, rules of statutory interpretation and general penalties. It also adopts the codification itself as an official codification.

A copy of the proposed ordinance is attached, as well as selected screen shots from the online compilation, for your information.

SANTA FE COUNTY

Ordinance No. 2013-_____

AN ORDINANCE CREATING DEFINITIONS, RULES OF INTERPRETATION, GENERAL RULES OF CONSTRUCTION, ADOPTING THE 2013 CODIFICATION OF ORDINANCES BY AND FOR THE COUNTY OF SANTA FE, NEW MEXICO

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY, NEW MEXICO.**

Section 1. Title of Code. This 2013 codification of ordinances by and for the County of Santa Fe, New Mexico, shall be designated as the "Santa Fe County Code of Ordinances" and may be cited herein as "the code" or "the code of ordinances."

Section 2. Interpretation. Unless otherwise provided herein or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of the code as those governing the interpretation of State law.

Section 3. Application of Future Ordinances. All provisions of Title I, compatible with future legislation, shall apply to ordinances hereafter adopted amending or supplementing the code unless otherwise specifically provided.

Section 4. Captions. Headings and captions used in the code other than the title, chapter, subchapter and section number are employed for reference purposes only and shall not be deemed a part of the text of any section.

Section 5. Definitions.

(A) (1) Words and phrases shall be taken in their plain, ordinary and usual sense.

(2) However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

(B) For the purpose of the code, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(1) Appointed official. Any person appointed to a board, commission or advisory body, in accordance with the code of ordinances.

(2) Code or code of ordinances. The county's code of ordinances, as modified by amendment, revision and adoption of new chapters, subchapters or sections.

- (3) County. Santa Fe County, New Mexico.
- (4) The board of county commissioners. The governing body of the County of Santa Fe, New Mexico.
- (5) County manager. The person appointed pursuant to NMSA 1978, § 4-38-19. Where applicable, the term county manager also means those persons whose authority has been granted in an acting capacity by the county manager.
- (6) Elected official. Those county officials elected under the laws of the state, specifically, the county clerk, treasurer, assessor, sheriff, probate judge, and the board of county commissioners.
- (7) Month. A calendar month.
- (8) Oath. An affirmation in all cases in which, by law, an affirmation may be substituted for an oath and, in such cases, the words swear and sworn shall be equivalent to the words affirm and affirmed.
- (9) Officer, office, employee, commission or department. An officer, office, employee, commission or department of the county unless the context clearly requires otherwise.
- (10) Person.
- (1) Extends to and includes a person, persons, firm, corporation, copartnership, trustee, lessee or receiver.
 - (2) Whenever used in any clause prescribing and imposing a penalty, the terms person or whoever, as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.
- (11) Preceding or following. Next before or next after, respectively.
- (12) State. The State of New Mexico.
- (13) Written. Any representation of words, letters or figures, whether by printing or otherwise.
- (14) Year. A calendar year unless otherwise expressed.

Section 6. Rules of Interpretation. The construction of all ordinances of the county shall be by the following rules unless the construction is plainly repugnant to the intent of the governing body or of the context of the same ordinance:

- (1) Words used in the present tense include the future;
- (2) Words in the future tense include the present;
- (3) Words in the plural include the singular;
- (4) Words in the singular include the plural;
- (5) The word “shall” is always mandatory and not merely directory; the word “may” is permissive; and
- (6) The impersonal pronouns “he”, “him” and “himself” shall denote either the feminine or the masculine gender.
- (7) "And" or "or". Either conjunction shall include the other as if written "and/or," if the sense requires it.
- (8) Acts by assistants. When a statute or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, the requirement shall be satisfied by the performance of the act by an authorized agent or deputy.
- (9) General term. A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

Section 7. Severability. The provisions of the code of ordinances are severable, and if any provision, subchapter, section, division, clause, sentence or part thereof is held to be illegal, invalid, unconstitutional or inapplicable to any person, persons, circumstances, situation or otherwise, the illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining sentences, clauses, divisions, sections, subchapter or parts of the code of ordinances, or their applicability to other persons, circumstances or situations.

Section 8. Reference to other sections. Whenever, in one section, reference is made to another section hereof, the reference shall extend and apply to the section referred to as subsequently amended, revised, recodified or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

Section 9. Reference to offices. Reference to a public office or officer shall be deemed to apply to any office, officer or employee of the county exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

Section 10. Errors and omissions.

(A) If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the

use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published.

(B) No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

Section 11. Official time. The official time, as established by applicable state/federal laws, shall be the official time within the county for the transaction of all county business.

Section 12. Reasonable time.

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of the act or the giving of the notice.

(B) (1) The time within which an act is to be done shall be computed by excluding the first day and including the last.

(2) If the last day be a Saturday, Sunday or county holiday, it shall be excluded.

Section 13. Ordinances repealed.

(A) The code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced.

(B) All prior ordinances pertaining to the subjects treated by the code shall be deemed repealed from and after the effective date of the code.

Section 14. Ordinances unaffected. All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in the code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

Section 15. Effective date of ordinances. An ordinance shall not become effective until thirty (30) days after it has been recorded with the County Clerk unless passed and approved as an emergency measure, in which event it shall become effective immediately following publication or at a subsequent date determined by the governing body.

Section 16. Repeal or modification of ordinance.

(A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall

continue in force until the recording of the ordinance repealing or modifying it when publication is required to give effect thereto unless otherwise expressly provided.

(B) No suit, proceeding, right, fine, forfeiture or penalty instituted, created, given, secured or accrued under any ordinance previous to its repeal shall, in any way, be affected, released or discharged, but may be prosecuted, enjoyed and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

(C) When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause or provision unless it is expressly provided.

Section 17. Ordinances which amend or supplement code.

(A) If the governing body shall desire to amend any existing chapter, subchapter or section of the code, the chapter, subchapter or section shall be specifically repealed and a new chapter, subchapter or section, containing the desired amendment, substituted in its place.

- (B) (1) Any ordinance which is proposed to add to the existing code a new chapter, subchapter or section shall indicate, with reference to the arrangement of the code, the proper number of the chapter, subchapter or section.
- (2) In addition to the indication thereof as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

Section 18. Section histories; State law references.

(A) As histories for the code sections, the original ordinance and the most recent three amending ordinances, if any, are listed. Example: (Ordinance 93 adopted 1/20/80; Ordinance 98 adopted 1/20/90; Ordinance 99 adopted 1/20/00)

- (B) (1) If a statutory cite is included in the history, this indicates that the text of the section reads substantially the same as the statute. Example:

Sec. 70.03 Stopping, standing or parking prohibited

No person shall move a vehicle, not lawfully under his or her control, into any prohibited area or away from a curb a distance as is unlawful.
(NMSA 1978, Section 66-7-351)

- (2) If a statutory cite is set forth as a "State law reference" following the text of the section, this indicates that the reader should refer to that statute for further information. Example:

Sec. 70.02 Local authority; enforcement

The county has the power to regulate the standing or parking of vehicles with respect to street and highways under its jurisdiction and within reasonable exercise of its police power. (Ordinance 2000-10 adopted 9/12/00)

State law reference-Authority, see NMSA 1978, Section 66-7-9.

Section 19. General penalty.

(A) County ordinances may be enforced by prosecution for violations of those ordinances in any court of competent jurisdiction of the county. Penalties for violations of any county ordinances shall not exceed a fine of \$300.00 or imprisonment for 90 days or both the fine and imprisonment; except that the county may enact and enforce ordinances that impose the following penalties in addition to any other penalty provided by law:

- (1) No more than \$1,000.00 for discarding or disposing of refuse, litter or garbage on public or private property in any manner other than by disposing it in an authorized landfill;
- (2) No more than \$5,000.00 for the improper or illegal disposal of hazardous materials or waste in any manner other than as provided for in the Hazardous Waste Act (NMSA chapter 74, article 4); and
- (3) No more than imprisonment for 364 days or a fine of \$1,000.00, or both, for violation of an ordinance regarding driving while under the influence of intoxicating liquor or drugs.

Section 20. County standards.

Section 21. Commission districts. As of the first day of January, 1991, the county shall be divided by precinct into five compact, contiguous, and substantially equally populated county commission districts as follows:

District 1: County commission district one shall be comprised of the following precincts: 1, 2, 3, 4, 5, 6, 7, 8, 10, 20, 21, 22, 23, 25, 26, 27, 28, 30, 40, 58, 59, 60, 61, 79, 83, 87.

District 2: County commission district two shall be comprised of the following precincts: 11, 24, 31, 32, 33, 34, 64, 66, 67, 80, 82.

District 3: County commission district three shall be comprised of the following precincts: 12, 15, 16, 17, 18, 19, 62, 72, 73, 75, 84, 85, 86.

District 4: County commission district four shall be comprised of the following precincts: 9, 13, 36, 37, 41, 42, 43, 44, 45, 46, 47, 48, 51, 52, 53, 54, 55, 57, 63, 68, 77, 81.

District 5: County commission district five shall be comprised of the following precincts:
14, 29, 35, 38, 39, 49, 50, 56, 65, 69, 70, 71, 74, 76, 78, 88.

(Ordinance 2011-08 adopted 10/11/11).

PASSED, APPROVED AND ADOPTED, on this ____ day of _____, 2013 by the Santa Fe
County Board of County Commissioners.

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

Kathy Holian, Chair

ATTEST:

Geraldine Salazar, Santa Fe County Clerk

APPROVED AS TO FORM:

Stephen C. Ross, County Attorney

TITLE I

GENERAL PROVISIONS

CHAPTER 10: RULES OF CONSTRUCTION; GENERAL PENALTY

Sec. 10.01 Title of code

This 2002 codification of ordinances by and for the County of Santa Fe, New Mexico, shall be designated as the "Santa Fe Code of Ordinances" and may be cited herein as "this code" or "this code of ordinances."

Sec. 10.02 Interpretation

Unless otherwise provided herein or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law.

Sec. 10.03 Application to future ordinances

All provisions of title I, compatible with future legislation, shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

Sec. 10.04 Captions

Headings and captions used in this code other than the title, chapter, subchapter and section number are employed for reference purposes only and shall not be deemed a part of the text of any section.

Sec. 10.05 Definitions

- (A) (1) Words and phrases shall be taken in their plain, ordinary and usual sense.
- (2) However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

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

Appointed official. Any person appointed to a board, commission or advisory body, in accordance with this code of ordinances. Appointed officials are not subject to the provisions of the county personnel ordinance and shall serve at the pleasure of the governing body and the county manager.

Classified employee. A person employed by the county who is entitled to grievance in accordance with the personnel policies and work rules and who is not exempt under the Fair Labor Standards Act.

Code or code of ordinances. The county's code of ordinances, as modified by amendment, revision and adoption of new chapters, subchapters or sections.

County. Santa Fe County, New Mexico.

County board of commissioners or board of county commissioners. The governing body of the County of Santa Fe, New Mexico.

County manager. The elected officer of the county who exercises administrative control and supervision over the county and hires or appoints directors of all county departments. Where applicable, the term county manager means those persons whose authority has been granted by the county manager.

Elected official. Those county officials elected under the laws of the state, specifically, the county manager, the municipal judge and members of the governing body.

Governing body. The county manager and the members of the board of county commissioners. The corporate authority of the municipality is vested in this body.

Interpretation. For the purpose of this code and ensuing chapters and appendices and when not inconsistent with the context:

- (1) Words used in the present tense include the future;
- (2) Words in the future tense include the present;
- (3) Words in the plural include the singular;
- (4) Words in the singular include the plural;
- (5) The word "shall" is always mandatory and not merely directory; the word "may" is permissive; and
- (6) The impersonal pronouns "he," "him" and "himself" shall denote either the feminine or the masculine gender.

Month. A calendar month.

Municipal officer. Any appointed employee. A municipal officer is limited to a department director.

Oath. An affirmation in all cases in which, by law, an affirmation may be substituted for an oath and, in such cases, the words swear and sworn shall be equivalent to the words affirm and affirmed.

Officer, office, employee, commission or department. An officer, office, employee, commission or department of the county unless the context clearly requires otherwise.

Person.

- (1) Extends to and includes person, persons, firm, corporation, copartnership, trustee, lessee or receiver.

TITLE XIII

GENERAL OFFENSES

CHAPTER 130: CONTROLLED SUBSTANCES; IMITATIONS

Sec. 130.01 Definitions

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

Controlled substance. A substance, as defined in NMSA, section 30-31-2E.

Distribute. The transfer, delivery or dispensing to another of an imitation controlled substance.

Imitation controlled substance. A substance that is not a controlled substance, but which, by overall dosage unit, appearance, including color, shape, size and markings, or by representations made would lead a reasonable person to believe that the substance is a controlled substance. In those rare cases when the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an imitation controlled substance, for example, in the case of powder or liquid, the court or authority concerned should consider, in addition to all other logically relevant factors, the following factors, as related to "representations made," in determining whether the substance is an imitation controlled substance:

- (1) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, of its use or of its effect;
- (2) Statements made to the recipient that the substance may be resold for consideration greatly in excess of the market value of the ingredients;
- (3) Whether the substance is packaged in a manner normally used for illicit controlled substances;
- (4) Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities;
- (5) Prior convictions, if any, of the owner or anyone in control of the object, under state or federal law, related to controlled substances or fraud, provided that this factor alone shall not be sufficient to support a conviction under this subchapter; and/or
- (6) Whether the physical appearance of the substance is substantially identical to a controlled substance.

Manufacture. The production, preparation, compounding, processing, encapsulating, tableting, packaging or repackaging or labeling or relabeling of an imitation controlled substance.

(Ordinance 1982-04, adopted 7/6/82)

Sec. 130.02 Manufacture and distribution of imitation controlled substances

It is unlawful for any person to, knowingly or under circumstances where a person reasonably should know, manufacture, distribute or possess, with intent to distribute, an imitation controlled substance. (Ordinance 1982-04 adopted 7/6/82) Penalty, see section 130.99

Sec. 130.99 Penalty

(A) Any person who violates the provisions of section 130.02 is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$300.00 or imprisoned for not more than 90 days, or both.

(B) In any prosecution for unlawful distribution or possession with intent to distribute of an imitation controlled substance, it is no defense that the defendant believed the imitation controlled substance to be a controlled substance.

(C) No criminal liability shall be imposed by sections 130.01 and 130.02 on any person who may lawfully manufacture or distribute controlled substances under NMSA, section 30-31-12, who manufactures, distributes or possess, with intent to distribute, an imitation controlled substance for use as a placebo by a registered practitioner in the course of professional practice or research.

(Ordinance 1982-04 adopted 7/6/82)

CHAPTER 131: NOISE CONTROL AND PUBLIC NUISANCES

GENERAL PROVISIONS

Sec. 131.01 Title

Sections 131.01 through 131.42 shall be known as the Santa Fe County Noise Control and Public Nuisance Ordinance. (Ordinance 2009-11, sec. 1, adopted 10/27/09)

Sec. 131.02 Definitions

Idling speed. A speed at which an engine will run when no pressure is applied to the accelerator or accelerator linkage.

Noise sensitive unit. Any building or portion thereof, vehicle, or other structure adapted or used for the overnight accommodation of persons, including, but not limited to, individual residential units, individual apartments, trailers, hospitals, and nursing homes.

Person. Any individual, any public or private corporation, association, partnership, or other legally recognized public or private entity.

Plainly audible. Unambiguously communicated to the listener. Plainly audible sounds include, but are not limited to, understandable musical rhythms, understandable spoken words, and vocal sounds other than speech which are distinguishable as raised or normal.

Sound producing device.

- (1) Loudspeakers, public address systems;

(Ordinance 2009-11, sec. 8, adopted 10/27/09)

PUBLIC NUISANCES

Sec. 131.40 Acts declared a public nuisance

(A) Abandoned property. Any deteriorated, wrecked, dismantled or partially dismantled, inoperable and/or abandoned property in unusable condition having no value other than nominal scrap or junk value, which has been left unprotected outside of a permanent structure from the elements. Without being so restricted this shall include deteriorated, wrecked, dismantled or partially dismantled, inoperable, abandoned motor vehicles, abandoned mobile homes, trailers, boats, machinery, refrigerators, washing machines and other appliances, plumbing fixtures, furniture, building materials and any other similar articles in such condition.

(B) Breeding place for flies, rodents and/or pests. The unhealthful accumulation or stockpiling of manure, garbage, tires, debris or discarded items which is a potential harboring place and breeding area for flies and rodents.

(C) Burning of any excrement, chemical or plastic substances, or any liquid or substance in violation of federal or state dischargeable substances statutes or county ordinances on any property. This includes the burning of any tires, rubber products, asphalt shingles, plastic, tar paper or any substance which may cause a black, hydrocarbon, toxic, or noxious plume of smoke.

(D) Combustible materials. Any dangerous accumulation upon any property of combustible refuse matter such as papers, sweepings, rags, grass, dead trees, tree branches, wood shavings, wood, magazines, cardboard, etc.

(E) Dead animals. For the owner of a dead animal to permit it to remain undisposed for more than seventy-two (72) hours.

(F) Disposal or dumping. The accumulation of garbage, refuse, waste, trash, rubbish or building materials upon any property outside an approved landfill.

(G) Dangerous buildings. Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a fire hazard.

(H) Odors. All disagreeable or obnoxious odors or stench, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stench, including smoke and fires, except the odors from existing agricultural lands.

(I) Pollution. The pollution of any public well, stream, lake, canal, or body of water by sewage, dead animals, dairy waste, industrial wastes, agricultural wastes, or other substances.

(J) Illegal activity. Any building, structure, or other place or location where any activity is conducted, performed or maintained in violation of local, state, or federal law.

(Ordinance 2009-11, sec. 9, adopted 10/27/09)

Sec. 131.41 Prohibitions and enforcement

It shall be unlawful for any person who is the owner of property to cause, permit, maintain, or allow the creation or maintenance of a public nuisance as described in section 131.40 hereof on such property. For purposes of this chapter the owner of property means the person in control of the property, or the owner's representative, an agent or attorney-in-fact of the owner. Enforcement of a violation of section 131.40, and administration, supervision or performance of actions taken pursuant to section 131.42 shall be through the county land use department. (Ordinance 2009-11, sec. 10, adopted 10/27/09)

Sec. 131.42 Removal of public nuisance

(A) Whenever the county finds that a person has caused, permitted, maintained or allowed the creation or maintenance of a public nuisance, the county shall give or cause to be given written notice of violation of this chapter by certified mail to the owner of property on which the public nuisance is situated that the public nuisance must be permanently removed within fifteen (15) calendar days of notice being sent.

(B) The owner of property may elect to have the county remove the public nuisance if the county, in its sole discretion, determines that it has sufficient staff and resources to complete the removal. The owner of the property may be required to reimburse the county for the removal and related administrative costs.

(C) The county may apply to a court of competent jurisdiction for an order or orders to compel removal of a public nuisance.

(Ordinance 2009-11, sec. 12, adopted 10/27/09)

CHAPTER 132: GRAFFITI

Sec. 132.01 Title

This chapter may be cited as the "Santa Fe County Graffiti Ordinance." (Ordinance 2007-12, sec. 1, adopted 11/13/07)

Sec. 132.02 Public nuisance; owner's duty to remove

(A) The board of county commissioners (hereinafter referred to as "the board") hereby declares that graffiti is a public nuisance that, if not promptly removed, will attract additional graffiti and has the effect of depressing property values and makes the county a less desirable place to live and visit.

(B) Any owner or person in control of real or personal property defaced by graffiti has a duty to timely abate or cause it to be removed.

(Ordinance 2007-12, sec. 2, adopted 11/13/07)

Sec. 132.03 Authority

This chapter is enacted pursuant to the authority in NMSA 1978, section 4-37-1 (1975) (as amended) to make and publish any ordinance to discharge the powers not inconsistent with statutory or constitutional limitations placed on counties. NMSA 1978, section 3-18-17(A) (1965) (as amended) permits a county "by ordinance [to] define a nuisance, abate a nuisance and impose penalties upon a person who creates or allows a nuisance to exist." NMSA 1978, section 4-37-3 (1993) (as amended) permits the county's enforcement "by prosecution for violations of [its] ordinances in any court of competent jurisdiction of the county." (Ordinance 2007-12, sec. 3, adopted 11/13/07)

Sec. 132.04 Definitions

Abate. To permanently remove or obscure so as to make graffiti indistinguishable.

Graffiti. Any inscription, work, figure, or design marked, etched, scratched, drawn, or painted on any surface without the express permission of the owner.

Owner. The owner that owns property upon which graffiti is found, the person in control of that property, or the owner's representative, an agent or attorney-in-fact of the owner.

(Ordinance 2007-12, sec. 4, adopted 11/13/07)

Sec. 132.05 Abatement

(A) Whenever the county finds that graffiti has been placed upon a structure, vehicle, improvement or natural feature within the county which is visible from a public right-of-way or county-owned land, the county shall give or cause to be given written notice of violation of this chapter by certified mail to the owner that the graffiti shall be abated within fifteen (15) calendar days of notice being sent.

(B) The owner may elect to have the county abate the graffiti if the county, in its sole discretion, determines that it has sufficient staff and resources to complete the abatement. The owner may be required to reimburse the abatement and related administrative costs.

(Ordinance 2007-12, sec. 5, adopted 11/13/07)

Sec. 132.99 Enforcement; penalty

(A) Any person may report alleged graffiti or a violation of this chapter to the county.

(B) Any person found guilty of violating this chapter may be punished in accordance with NMSA 1978, section 4-37-3 (as amended).

(C) The county may apply to a court of competent jurisdiction for an order or orders to compel abatement of graffiti.

(Ordinance 2007-12, sec. 6, adopted 11/13/07)

CHAPTER 133: DRIVING UNDER THE INFLUENCE

Sec. 133.01 Vehicle nuisance

A motor vehicle is hereby declared to be a nuisance and subject to forfeiture pursuant to the provisions of this chapter if it is:

- (1) Operated in the unincorporated areas of the county by a person who has been convicted of two prior driving while intoxicated offenses and is arrested for a third or subsequent offense of driving under the influence of intoxicating liquor or drugs; or
- (2) Operated in the unincorporated areas of the county by a person whose license is revoked as a result of one or more convictions for driving while intoxicated or revoked as a result of a driving while intoxicated arrest.

(Ordinance 2006-05, sec. 1, adopted 4/25/06)

Sec. 133.02 Vehicles subject to forfeiture

Except as otherwise provided herein, any motor vehicle which has been declared a vehicle nuisance as defined above shall be subject to temporary seizure or permanent forfeiture. (Ordinance 2006-05, sec. 11, adopted 4/25/06)

Sec. 133.03 Seizure; forfeiture proceeding

(A) Motor vehicles subject to forfeiture under this chapter may be temporarily seized by the sheriff or any deputy sheriff of the county.

(B) Temporary seizure may be made if it is incident to an arrest of the driver of the vehicle for either driving while intoxicated (third offense, two prior convictions) or driving while his or her license is revoked as a result of a driving while intoxicated arrest.

(C) A vehicle temporarily seized under this chapter shall not be subject to replevin, but is deemed to be in the custody of the sheriff or deputy sheriff seizing it subject only to the orders and decrees of the district court. The sheriff or deputy sheriff may take custody of the vehicle and remove it to an appropriate and official location within the district court's jurisdiction for disposition in accordance with this chapter. The sheriff shall establish reasonable towing and storage fees for vehicles temporarily seized in accordance with this chapter.

(D) Immediately after a vehicle is temporarily seized as provided above, the sheriff or arresting deputy shall serve a copy of the notice of forfeiture upon the individual from whom the vehicle was seized at the time of arrest. A copy of the notice of forfeiture will be mailed postage prepaid to the lawfully registered owner as verified by the state motor vehicle division. The notice shall include the following:

- (1) The license plate number, make, type and color of the vehicle;
- (2) The location from which the vehicle was temporarily seized;
- (3) A statement that the vehicle has been taken into custody and stored;
- (4) The reason for temporary seizure;
- (5) A name, phone number and title of the county employee from whom the owner can obtain further information;
- (6) A statement that daily storage charges will be assessed in addition to a towing charge;
- (7) A statement that the owner has the right to contest the validity of the impoundment by requesting a hearing in writing within ten (10) business days of the date of mailing of the notice of forfeiture; and
- (8) A copy of the ordinance from which this chapter derives.

(E) The owner may request that a hearing be scheduled before a county hearing officer, appointed by the county manager. The hearing shall be held within ten (10) business days of receipt of the request unless the hearing is continued with agreement of the parties. The hearing shall be informal and not bound by the technical rules of evidence. The county hearing officer shall only determine whether the law enforcement officer had probable cause to seize the vehicle. The county hearing officer shall mail written notice of his or her decision to the owner within two (2) working days of the hearing. If the county hearing officer finds that the law enforcement officer did not have probable



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

Date: April 2, 2013

To: Board of County Commissioners

Via: Katherine Miller, County Manager *KM 4.22.13*

From: Kathy Holian, Santa Fe County Commissioner, District 4

Re: **Resolution 2013-_____, A Resolution Supporting Community Solar and Directing Staff to Work With the City of Santa Fe, Public Service Company of New Mexico, and the New Mexico Public Regulation Commission to Implement a Community Solar Program in Santa Fe County. (Commissioner Holian) (DISCUSSION ONLY, FIRST HEARING)**

Issue:

Despite its allure, adopting on-site solar energy systems remains impossible for a surprising, even overwhelming, number of Americans. In fact, 80% of metered utility customers in the U.S. are unable to install solar energy systems on their rooftops due to building restrictions, rental and leasing restrictions, prohibitive up-front costs, low credit scores, or an abundance of shade on their property, among other reasons.

Many of these barriers to solar access cannot or will not change anytime soon. Fortunately, though, the solar industry has pioneered an emerging solution that breaks down these barriers to access: community solar.

With community solar installations (also known as solar gardens, community-sited energy, off-site solar, or solar cooperatives), a utility-scale solar PV project of up to several megawatts is installed on a site that receives ample sunlight. Homeowners and businesses then can purchase either individual modules or a limited-term "subscription" to the electricity produced by a defined portion of the system. With the consent of the utility company, these customers then receive a credit on their bills accounting for this electricity generation, allowing them to save money on electricity bills and have a stake in clean, renewable energy. The systems, in turn, are

operated and maintained by private enterprises. These companies use economies of scale and their industry experience to design exceedingly cost-effective installations that ultimately make solar energy more accessible to a broader array of potential customers.

Community solar programs are quickly emerging in several states. Colorado's Xcel Energy's program, for example, sold out within minutes of launching its program in August 2012. After a 30 minute period, applications were halted entirely because the utility received three times as many applications as the program's allowed capacity. This demonstrates the profound interest that developers and consumers have in solar models where solar ownership is both simple and affordable. Any utility customer, including renters, low-income residents, and industrial facilities, can easily connect into their community's solar garden. What's more, community solar programs turn solar energy into an asset that can be sold, donated, or transferred when a customer moves to a new residence within that utility territory.

Request Action:

This agenda is up for discussion only and no action is required. **(DISCUSSION ONLY, FIRST HEARING)**

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

RESOLUTION NO. 2013 _____

**A RESOLUTION SUPPORTING COMMUNITY SOLAR AND DIRECTING STAFF TO
WORK WITH THE CITY OF SANTA FE, PUBLIC SERVICE COMPANY OF NEW
MEXICO , AND THE NEW MEXICO PUBLIC REGULATION COMMISSION TO
IMPLEMENT A COMMUNITY SOLAR PROGRAM IN SANTA FE COUNTY**

WHEREAS, Community Solar is defined as a solar-electric system that, through a voluntary program, provides power and/or financial benefit to, or is owned by, multiple community members, both residential and commercial;

WHEREAS, Community Solar advocates are driven by the recognition that the on-site solar market comprises only one part of the total viable market for solar energy;

WHEREAS, the adopted 2010 Sustainable Growth Management Plan states as a policy priority that, "solar...facilities should be encouraged for new and existing buildings and structures throughout the County";

WHEREAS, many Santa Fe County citizens are in rental housing and many businesses lease their buildings preventing them from being able to take advantage of owning cost-effective on-site solar facilities;

WHEREAS, community options are needed to expand access to solar power for renters, those with shaded roofs, and those who choose not to install a residential system on their home or business for financial or other reasons;

WHEREAS, as a group, electric utility ratepayers and taxpayers fund solar incentive programs and as a matter of equity, solar energy programs should be designed in a manner that allows all contributors to participate;

WHEREAS, Community Solar projects are designed to increase access to solar energy and to reduce up-front costs for participants;

WHEREAS, the secondary goals met by many Community Solar projects include:

- Improved economies of scale
- Optimal project siting
- Increased public understanding of solar energy
- Generation of local jobs
- Opportunity to test new models of marketing, project financing and service delivery

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF SANTA FE COUNTY, that the County strongly urges Public Service Company of New Mexico to favorably consider opportunities to support and promote a Community Solar model for the Santa Fe County region. The Commission hereby directs staff to work with the City of Santa Fe, Public Service Company of New Mexico, interested citizens and organizations, and the New Mexico Public Regulation Commission to pursue a viable Community Solar program for the Santa Fe County region. Copies of this resolution shall be sent to the Commissioners of the New Mexico Public Regulation Commission and to the Chief Executive Officer of Public Service Company of New Mexico.

PASSED, APPROVED AND ADOPTED this 30th day of April, 2013.
THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

By: _____

Kathy Holian, Chair

Attest:

Geraldine Salazar, Santa Fe County Clerk

Approved to form:

Stephen C. Ross, Santa Fe County Attorney

Santa Fe County

Fiscal Impact Report

Department / Division: Commissioner Holian

Action Item to be Considered: Community Solar Resolution

Agreement Number: NA

Indicate with a <input checked="" type="checkbox"/> below	Section 1 -Identify the type of document below for BCC Consideration and Approval
<input type="checkbox"/>	Revenue, e.g. Grant, charges and fees, etc.
<input type="checkbox"/>	Contractual Services (includes change orders), e.g. Professional services agreement, construction, price agreement, joint powers agreement, lease agreement, etc.
<input type="checkbox"/>	Loan/Grant Agreement
<input checked="" type="checkbox"/>	Other: Resolution

Indicate with a <input checked="" type="checkbox"/> below	Section 2 - Funding Source Identify the item below for BCC Consideration and Approval
<input type="checkbox"/>	General Fund, e.g. property taxes, gross receipt taxes, etc.
<input type="checkbox"/>	Special Revenue Funds, e.g. Fire, Indigent, etc.
<input type="checkbox"/>	Capital Outlay GRT, (capital infrastructure only, does not include maintenance or repair costs)
<input type="checkbox"/>	Bond Proceeds (general obligation and gross receipt tax revenue bonds)
<input type="checkbox"/>	Grant Funds. If yes, indicate the percentage and amount required % and/or \$, and source. % \$ Source
<input checked="" type="checkbox"/>	Other: N.A.

Section 3 - Ongoing operations and maintenance (O&M) requirements:		
Short Term (Specify needs for the current fiscal year only)		
None. Can be implemented with existing FTEs.		
New FTE's #	Position	Hourly Rate \$
Current Fiscal Year Cost \$ 0	Annual Cost \$ 0	
Initial Costs (Vehicle, computer, office space, etc.)		
NA		
O & M (Concisely identify the recurring needs, supplies, equipment, and the resources necessary for carrying out the job duties)		
NA		

Current Fiscal Year Cost \$	Annual Cost \$
Long Term (Specify the needs for the next four (4) years. This will include staff, O & M, asset renewal and replacement costs, and additional capital needs) None.	
Salary & Benefits:	
All other expenses:	

Section 4 - Revenue	
Short Term (Specify the revenue potential for the current fiscal year only. If a grant, specify the total grant award amount and the term. If a fee or charge for service, explain basis of revenue projection). NONE	
Current FY Estimate \$	
Long Term (Specify the revenue potential for the next four (4) fiscal years. If a grant, specify the total grant award amount and the term. If a fee or charge for service, explain basis of revenue projection). NONE	
Annual Estimate \$	Total (next 4 years) \$

Additional Narrative

(Should include additional information such as significant issues, administrative issues and technical issues. What consequences, if any, may occur if this item is not acted upon):

Community solar projects will stimulate local economic development.

Prepared by Craig O'Hare

Reviewed by

 File Attachment

 File Attachment

 File Attachment



