

**ORDINANCE 2023-530  
CITY OF AZTEC, NEW MEXICO**

**An Ordinance Amending Article III and Article IV of Chapter 12 Offenses**

**WHEREAS**, the City Commission in conjunction with City staff find it necessary to review and update City Code; and

**WHEREAS**, the City Commission may, by ordinance, add, remove or change City Code as needed or by recommendation from City Staff; and

**WHEREAS**, there has been human behavior in public areas that are threatening to the welfare and safety of our residents and visitors; and

**WHEREAS**, such unwanted behavior is not desired in our public facilities or on public property.

**NOW, THEREFORE, BE IT ORDAINED** by the governing body of the City of Aztec, New Mexico that Chapter 12 Offenses has been amended in the following section.

**PASSED, APPROVED, SIGNED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_ 2023, by the Aztec City Commission, City of Aztec, New Mexico.

\_\_\_\_\_  
Mayor Michael A. Padilla Sr.

ATTEST:

\_\_\_\_\_  
Karla Saylor, City Clerk CMC

APPROVE AS TO FORM:

\_\_\_\_\_  
City Attorney

Advertised Date of Final Adoption: \_\_\_\_\_

Effective Date of Ordinance: \_\_\_\_\_

## Chapter 12 OFFENSES

### ARTICLE III. OFFENSES INVOLVING PROPERTY RIGHTS

#### DIVISION 4. TRESPASS AND RELATED OFFENSES

##### **Sec. 12-101. Criminal Trespass.**

1. Criminal trespass consists of unlawfully entering or remaining upon the lands of another knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant thereof.
2. Criminal trespass also consists of unlawfully entering or remaining upon lands owned, operated or controlled by the state or any of its political subdivisions knowing that consent to enter or remain is denied or withdrawn by the custodian thereof.
3. Any person who enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, is guilty of a **petty** misdemeanor.
4. Any person who enters and remains on the lands of another after having been requested to leave is guilty of a **petty** misdemeanor.
5. Any person who enters upon the lands of another when such lands are posted against trespass at every roadway or apparent way of access is guilty of a **petty** misdemeanor.
6. Any person who drives a vehicle upon the lands of another except through a roadway or other apparent way of access, when such lands are fenced in any manner, is guilty of a **petty** misdemeanor.
7. Criminal trespass is a **petty** misdemeanor.  
(Code 2007, 12-101)

##### **Sec. 12-102. Wrongful Entry of Public Facility.**

1. Wrongful entry of a public facility consists of knowingly entering any public facility without permission of the lawful custodian when the facility is not open to the public. As used in this section, "public facility" means any building, structure or enclosure used for a public purpose or as a place of public gathering owned or under the control of the state or one (1) of its political subdivisions or a religious, charitable, educational, or recreational association.
2. Wrongful entry of a public facility is a **petty** misdemeanor.  
(Code 2007, 12-102)

## Sec. 12-103. Wrongful Use of Public Property.

1. Wrongful use of public property consists of:
  - (1) Knowingly entering any public property without permission of the lawful custodian or his representatives when the public property is not open to the public;
  - (2) Remaining in or occupying any public property after having been requested to leave by the lawful custodian, or his representative, who has determined that the public property is being used or occupied contrary to its intended or customary use or that the public property may be damaged or destroyed by the use; or
  - (3) Depriving the general public of the intended or customary use of public property without a permit.
  - (4) Establishing temporary or permanent habitation through personal storage or setting up living accommodations on public property without a permit. This includes camping with tents or creation of structures for living accommodations or dwelling within vehicles.
2. Permits to occupy or use public property may be obtained from the lawful custodian or his representative upon written application which:
  - (1) Describes the public property to be occupied or used; and
  - (2) States the period of time during which the public property will be occupied or used. The applicant shall pay in advance a reasonable fee or charge for the use of the public property. The fee or charge shall be prescribed by the lawful custodian or his representative.
3. The lawful custodian or his representative may issue the permit if he believes that the use or occupation of the public property will not unreasonably interfere with the intended or customary use of the public property by the general public and that the use will not damage or destroy the public property.
4. Any person occupying or using public property under the authority of a permit shall submit to a search for firearms or other weapons and surrender any firearms or other weapons to any peace officer, who has jurisdiction, upon request.
5. As used in this section, "public property" means any public building, facility, structure or enclosure used for a public purpose or as a place of public gathering, owned or under the control of the state or one (1) of its political subdivisions or a religious, charitable, educational or recreational association.
6. Any person who commits wrongful use of public property after having been requested to leave by the lawful custodian or his representative or any peace officer, who has jurisdiction, or any person who commits wrongful use of public property is guilty of a **petty** misdemeanor.  
(Code 2007, 12-103)

### **Sec. 12-104. Simple Trespass.**

The following acts are hereby declared unlawful:

1. Being concealed upon any property of another without lawful business with the person in lawful possession of the premises.
2. Entering upon any private property and looking into any occupied dwelling without the consent of the occupant or owner of the dwelling.
3. Entering or remaining in or upon the buildings or grounds of any public, private, parochial school or preschool with the intention, as evidenced by some overt act, of interfering with the activities on the premises of teachers, pupils or children.  
(Code 2007, 12-104)

### **Sec. 12-105. Idling, Loitering, or Prowling.**

1. No person shall idle, loiter, or prowl in a place, at a time and in a manner that warrants alarm for the safety of persons or property in the vicinity.
  - (1) Loitering shall include the presence of habitual drunkards or intoxicated persons in or around a place, lewd or indecent displays, profanity, rowdiness, undue noise, concentrations of litter or trash, or other disturbances or activities offensive to the general public.
  - (2) Idling shall include sitting or lying in public areas (e.g. sidewalk, benches, picnic tables, etc.) for extended periods of time.
2. Among the circumstances which may be considered in determining whether such alarm is warranted, is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object.
3. Unless flight by the actor or other circumstance makes it impracticable, a peace officer shall, prior to any risk for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct.
4. No person shall be convicted of an offense under this section, if the peace officer did not comply with subsection (c) above, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.
5. A person who commits idling, loitering or prowling is guilty of a **petty** misdemeanor.  
(Code 2007, 12-105)

### **Secs. 12-106 to 12-120. Reserved.**

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## ARTICLE IV. OFFENSES AGAINST PUBLIC PEACE AND ORDER

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### Sec. 12-121. Disorderly Conduct.

1. Disorderly conduct consists of either:
  - (1) Engaging in any public place in a violent, abusive, indecent or otherwise disorderly conduct which creates a clear and present danger of violence;
  - (2) Maliciously making a telephone call with intent to annoy or threaten another, whether or not conversation ensues;
  - (3) Maliciously disturbing, threatening, or, in an insolent manner, intentionally touching any house or vehicle occupied by a person;
  - (4) Inciting, causing, aiding, abetting or assisting in creating any riot, affray or disturbance at or within any dwelling or building, whether public or private, or at any other public place in the city; or
  - (5) Using in any public place fighting words which by their very utterance are likely to provoke a violent reaction in an average person to whom such words are addressed.
2. Disorderly conduct is a **petty** misdemeanor.  
(Code 2007, 12-121)

### Sec. 12-122. Unlawful Assembly.

1. Unlawful assembly consists of three (3) or more persons assembling together with intent to do any unlawful act with force or violence against the person or property of another, and who shall make any overt act to carry out such unlawful purpose.
2. Unlawful assembly is a **petty** misdemeanor.  
(Code 2007, 12-122)

### Sec. 12-123. Disturbing the Peace.

It is unlawful to disturb the public peace. Disturbing the peace consists of the intentional engaging in violent, abusive, indecent, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the public peace of others.  
(Code 2007, 12-123)

### Sec. 12-124. Obstructing Movement.

1. Obstructing movement consists of either:
  - (1) Hindering, annoying or molesting persons passing along any street, sidewalk, crosswalk or other public way; or

(2) Soliciting for money or goods (commonly referred to as panhandling) along any street, street intersection, sidewalk, crosswalk or other public area; or

(3) Loitering, sitting or standing around at the entrance of any church, public hall, theater, public building or other place of public assemblage in any manner so as to unreasonably obstruct such entrance.

2. Obstructing movement is a **petty** misdemeanor.

(Code 2007, 12-124)

### **Sec. 12-125. Unreasonable Noise.**

1. Unreasonable noise consists of creating any unreasonably loud, disturbing or unnecessary noise of such character, intensity or duration as to be detrimental to the repose, life or health of others, including but not limited to, the following specific noises if created in violation of this section:

(1) The sounding of any horn or signaling device of any automobile, motorcycle, truck or other vehicle on any street or public place, except as a danger warning, which creates an unreasonable, loud or harsh sound or which occurs for an unnecessary and unreasonable period of time. This is not to include noise caused by accident or mechanical, electrical or other difficulty or failure;

(2) The playing of any radio, television, phonograph, musical instrument or other sound producing machine in such a manner or with such an unreasonable volume as to disturb the quiet, comfort or repose of persons in any dwelling, motel, hotel, hospital or sanatorium;

(3) The use of any automobile, truck, bus or motorcycle, or any other motorized vehicle or equipment, so out of repair or so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise;

(4) The use of any loudspeaker, drum, whistle, bell or other instrument or device for the purpose of attracting attention by the creation of sound to any performance, show, sale, display or merchandise or political candidate, party or platform without first obtaining a written permit from the city commission or its designated representative. The city commission or its designated representative shall issue such permit, subject only to such reasonable standards of noise volume and hours of operation as the city commission may adopt;

(5) The creating of any excessive noise on any street adjacent to any hospital, school institution of learning, church or court which interferes with the workings of such institution or which disrupts or annoys occupants of said buildings.

(6) The use of a retarder (also commonly known as jake brakes and compression brakes) on any truck, automobile, bus or any other motorized vehicle shall be prohibited from use in the city limits. (Exception; The use of jake brakes is authorized on Navajo Dam Road as it approaches Highway 550 because of the degree of slope on the hill approaching the stop.) Retarder means a device or piece of equipment which helps to

slow a vehicle's rate of speed (braking power). When activated, a retarder creates noise through the vehicle's exhaust system. Retarder, for this section, includes any exhaust and/or engine device. The use of a retarder shall not be restricted in an emergency.

2. Unreasonable noise is a petty misdemeanor.  
(Code 2007, 12-125)

### **Sec. 12-126. Truancy.**

1. Definitions. For the purpose of this section, the following terms, phrases, words and their derivations, shall have the meaning given herein.

#### **Qualified student**

A person as defined in [NMSA 1978, § 22-8-2](#), and any person who because of his age is eligible to be a qualified student as defined in [NMSA 1978, § 22-8-2](#), and/or a person who at the time of the offense is enrolled in kindergarten through twelfth grade.

#### **Parent**

A person who is:

A natural parent, adoptive parent, or stepparent of a qualified student; or

- At least eighteen (18) years of age and authorized by a parent or guardian to have the care and custody of a qualified student.

#### **Guardian**

A person who is:

- A person who, under court order, is the guardian of the person of a qualified student; or
- A public or private agency with whom a qualified student has been placed by a court.

2. Offenses.

(1) A qualified student who is subject to compulsory education or to compulsory continuing/alternative education pursuant to [NMSA 1978, § 22-12-2](#), is guilty of an offense if he is in or upon public streets, public places, places of amusement and eating places, vacant lots or any unsupervised place, during the hours when the qualified student's school is in session. A person shall be excused from the compulsory education requirement if the person:

(a) Is specifically exempted by law from the provisions of this section;

(b) Has graduated from a high school;

(c) Is at least sixteen (16) years of age and has been excused by the local school board or its authorized representative upon a finding that the person will be employed in a gainful trade or occupation or engaged in an alternative form of education sufficient for the person's educational needs and the parent or other person having custody and control consents;

(d) Has the consent of the parent or person having custody and control of the person to be excused, the person is excused from the provisions of this section by the

superintendent of schools of the school district in which the person is a resident and the person is under eight (8) years of age; or

- (e) Has the consent of the parent or person having control of the person to be excused from school attendance and/or in the immediate control of that parent or person;
- (f) Is judged, based on standards and procedures adopted by the state board, to be unable to benefit from instruction because of learning disabilities or mental, physical or emotional conditions.

(2) This section shall not apply to qualified students who are in public places in conjunction with a field trip or program conducted by the student's school or who have been excused pursuant to their school's policies or regulations.

(3) A parent or guardian of a qualified student is guilty of an offense if he knowingly permits the qualified student to be in violation of subsection (1), above.

3. Penalties. Any person who violates any revision of this section shall, upon conviction, be subject to a fine. Parent(s) or legal guardian(s) having custody or control of a minor in violation of this section, committing a second or subsequent offense shall be liable for the cost of the personnel attending to the minor. **Penalties are established in Chapter 1, Section 1-12.**

~~First offense: \$100.00 fine or  
40 hours of community service or  
30 days of unexcused absences.~~

~~Second offense: \$200.00 fine or  
80 hours of community service or  
45 days of unexcused absences.~~

~~Third offense: \$300.00 fine or  
120 hours of community service or  
60 days of unexcused absences.~~

4. Exemptions. Nothing in this section shall be construed to apply to home schools established as specified in home school requirements, [NMSA 1978, § 22-1-2.1](#).

(Code 2007, 12-126)

### **Sec. 12-127. Disorderly House.**

1. It shall be unlawful for any person to keep any common, ill-governed or disorderly house or to suffer any drunkenness, quarreling, fighting, gambling or any riotous or disorderly conduct whatsoever on his premises or the premises under his direct possession or control.

2. A person who violates this section is guilty of a petty misdemeanor.

(Code 2007, 12-127)

### **Secs. 12-128 to 12-140. Reserved.**