

O-24-42 Proposed Amendments

| Amendment # | SECTION/TOPIC | SPONSOR | DESCRIPTION |
|-------------|----------------------------|-------------|--|
| A | 1 – Vacancy | Baca | Adds definitions for common area and Useable Floor area, clarifies other definitions and creates a new vacancy standard for the ground floor and all other upper floors. |
| B | 1 - Vacancy | Baca | GFA and SQFT Base Cost definitions, reorganization of existing exemption Registration fee table correction (technical) Annual registration deadline date correction (technical) |
| C | 1 - Vacancy | Lewis | Assessment of fees after ten years of vacancy |
| D | 1 – Vacancy | Baca | This eliminates the government owned building and government nexus exemption for Vacancy Registration. |
| E | 1 - Vacancy | Lewis | Strike “Private Cause of Action” |
| F | 1&3 – Vacancy/Dilapidation | Baca | Use of fees and fines to fund enforcement + ACS |
| G | 3 - Dilapidation | Lewis | Remove residential properties and convert back to the existing “Commercial Dilapidation Ordinance” |
| H | 5 – No Obstruction Zones | Baca/Rogers | Add exemption for First Amendment and street performers; strike language prohibition on carrying banners or signs. |
| I | 5 – No Obstruction Zones | Rogers | Add exemption for First Amendment |

O-24-42 Proposed Amendments

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|---|--------------------------|--------|--|
| J | 5 – No Obstruction Zones | Rogers | Strike prohibition on sleeping, sitting, etc.; conduct that deprives pedestrians of the intended use of sidewalk |
| K | 5 – No Obstruction Zones | Rogers | Update to penalty structure |
| L | 5 – No Obstruction Zones | Baca | Penalty – Warning/Services |

**CITY COUNCIL
of the
CITY OF ALBUQUERQUE**

October 7, 2024

FLOOR AMENDMENT NO. _____ TO O-24-42

AMENDMENT SPONSORED BY COUNCILOR: Joaquín Baca

Amend the *Downtown Vacant Buildings and Properties Ordinance* as follows:

1. On page 6, add the following new definitions in alphabetical order in Section 14-24-3. DEFINITIONS:

[COMMON AREA. Portions of a building that are available for use by all tenants or occupants on a non-exclusive basis.]

[USEABLE FLOOR AREA (UFA). The net floor area of a building where persons may move about and carry-on usual tasks for working and living but does not include common area. For empty parcels or lots, the UFA is the total area.]

2. Starting on page 6, line 18, amend the definition of SQFT BASE COST as follows:

SQFT BASE COST. **[The amount of gross floor area (GFA) that meets the vacant building or property definition for properties or buildings that are four stories or less. For buildings that are 5 stories or more, the GFA shall only be applicable to the ground floor.]** **[The fee determined by the amount of vacant UFA that is applicable to properties and buildings subject to this Ordinance, as outlined in the Table under § 14-24-6.]**

3. Starting on page 6, line 22, amend the definition of VACANT BUILDING OR PROPERTY as follows:

VACANT BUILDING OR PROPERTY [or VACANCY]. Any building or property

A Section 1. Downtown Vacant Buildings and Properties Ordinance

which no person or persons actually, currently conducts a lawfully licensed business, or lawfully resides or lives in any part of the building or structure as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupant(s), or tenant(s), or otherwise claiming possession through the owner, on a permanent, non-transient basis.

- a. [A building is deemed vacant when:
 - i. A ground floor UFA totals 20 percent or more vacancy;
and/or
 - ii. Upper floor(s) combined UFA totals 80 percent or more
vacancy and is only enforceable after June 30th, 2030.
- b. An empty parcel or lot is deemed vacant.]

4. Starting on page 7, line 5, amend Section 14-24-5 REGISTRY as follows.

(A) [By June 30th of each year.] [A][a]ll Responsible Parties must register their vacant buildings and properties within the Downtown Center[. As defined above:]
[Responsible Parties are required to register their vacant building or property by December 31st of each year.]

- a. [A building is deemed vacant when:
 - i. A ground floor UFA totals 20 percent or more vacancy;
and/or
 - ii. Upper floor(s) combined UFA totals 80 percent or more
vacancy and is only enforceable after June 30th, 2030.
- b. An empty parcel or lot is deemed vacant.]

5. Starting on page 8, line 19, amend section 14-24-6 REGISTRATION FEE as follows.

§ 14-24-6 REGISTRATION FEE

The [fee to register a vacant building or property pursuant to Section 14-24-5 above] [registration fee for vacant properties within the Downtown Center] shall be assessed using area and time. The City shall use the equation and table below to determine vacancy registration fees:

A Section 1. Downtown Vacant Buildings and Properties Ordinance

(Years Vacant)*(SQFT base cost) = Vacancy Registration Fee

| [Square feet] [Total Vacant UFA] | SQFT Base Cost |
|----------------------------------|----------------|
| < 1,000 sqft | \$1,000.00 |
| 1,000 - 5,000 sqft | \$2,000.00 |
| [5,000] [5,001] – 10,000 sqft | \$3,000.00 |
| [10,000] [10,001] – 15,000 sqft | \$4,000.00 |
| > [15,000] [15,001] sqft | \$5,000.00 |

Explanation:

This amendment adds the definition of Useable Floor area and common area to exclude spaces within buildings such as hallways and lobby's from being part of the measurement included in the Vacancy Registration Fee equation. Another part of this amendment clarifies the SQFT Base Cost definition to include UFA.

The final part of this amendment decreases the amount of space that triggers vacancy registration on the ground floor to 20% vacancy. For example, if a property owners ground floor is 80% occupied, then they are not required to register their property under the vacancy ordinance. The other part only requires 20% occupancy for all the floors above the groundfloor and is also not applicable until July 1, 2030, to give property owners a 5-year buffer before the City starts tracking their vacancy.

**CITY COUNCIL
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October 7, 2024

FLOOR AMENDMENT NO. _____ TO O-24-42

AMENDMENT SPONSORED BY COUNCILOR: Joaquín Baca

Amend the *Downtown Vacant Buildings and Properties Ordinance* as follows:

1. On page 6, add the following new definitions in alphabetical order in Section 14-24-3 DEFINITIONS:

[COMMON AREA. Portions of a building that are available for use by all tenants or occupants on a non-exclusive basis.]

[GROSS FLOOR AREA (GFA). The total floor area of a building or property, excluding common areas, expressed in square feet measured from the outside surface of exterior walls or lot lines.]

2. Starting on page 6, line 18, amend the definition of SQFT BASE COST as follows:

SQFT BASE COST. [The amount of gross floor area (GFA) that meets the vacant building or property definition for properties or buildings that are four stories or less. For buildings that are 5 stories or more, the GFA shall only be applicable to the ground floor.] [The fee determined by the amount of vacant GFA that is applicable to properties and buildings subject to this Ordinance, as outlined in the Table under § 14-24-6.]

3. On page 7, line 7, amend Section 14-24-5 REGISTRY as follows:

(A) All Responsible Parties must register their vacant buildings and properties within the Downtown Center. Responsible Parties are required to register their vacant building or property by [December 31st] [June 30th] of each

year.

4. On page 8, line 23, update the table in Section 14-24-6 REGISTRATION FEE as follows:

| [Square feet] [Gross Floor Area] | SQFT Base Cost |
|----------------------------------|----------------|
| < 1,000 sqft | \$1,000.00 |
| 1,000 - 5,000 sqft | \$2,000.00 |
| [5,000] [5,001] – 10,000 sqft | \$3,000.00 |
| [10,000] [10,001] – 15,000 sqft | \$4,000.00 |
| > [15,000] [15,001] sqft | \$5,000.00 |

5. On page 9, line 24, add the following exemption to Section 14-24-7(B):

§ 14-24-7 EXEMPTIONS FOR CERTAIN BUILDINGS AND PROPERTIES.

(B) The Downtown Vacant Property Registration Fee does not apply in the following circumstances, as determined by the Mayor or their designee:

[(6) For buildings that are five (5) stories or more, the SQFT Base Cost that is used to calculate the Vacancy Registration Fee under § 14-24-6 shall only be applicable to the ground floor.]

Explanation:

This amendment adds Gross Floor Area and Common Area as a definition to assure clarity when calculating the Vacancy Registration Fee. It also clarifies the definition of SQFT Base Cost by removing language that should be under the exemptions section, which is part 3 of this amendment. Part 3 just transfers the exemption for buildings that are 5 stories or over to the exemptions section.

There is also a technical correction under #3 that corrects the date to June 30th to reflect the fiscal calendar as shown in the rest of the Ordinance.

This amendment also is a technical correction to reflect a distinction in fee levels for the SQFT Base Cost, as part of the Vacancy Registration Fee equation in Section 14-24-6. It also corrects Square feet to gross floor area to reflect language in the definitions section.

**CITY COUNCIL
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October 7, 2024

FLOOR AMENDMENT NO. _____ TO O-24-42

AMENDMENT SPONSORED BY COUNCILOR: Dan Lewis

1. On page 8, lines 19-22, amend Section 14-24-6 of the *Downtown Vacant Buildings and Properties Ordinance* as follows:

§ 14-24-6 REGISTRATION FEE.

The registration fee for vacant properties within the Downtown Center shall be assessed using area and time. [Registration fees may only be assessed after a building has been vacant for ten years.] The City shall use the equation and table below to determine vacancy registration fees:

(Years Vacant[- 9])*(SQFT base cost) = Vacancy Registration Fee

Explanation: This amendment makes it so registration fees may only be assessed on buildings that have been vacant more than ten years and adjusts the fee equation to begin after the tenth year.

D Section 1. Downtown Vacant Buildings and Properties Ordinance
AND
Section 3. Downtown Dilapidation Ordinance

**CITY COUNCIL
of the
CITY OF ALBUQUERQUE**

October 7, 2024

FLOOR AMENDMENT NO. _____ TO O-24-42

AMENDMENT SPONSORED BY COUNCILOR: Joaquin Baca

1. Starting on page 8, line 25, amend Section 14-24-7(A) of the *Downtown Vacant Buildings and Properties Ordinance* as follows:

§ 14-24-7 EXEMPTIONS FOR CERTAIN BUILDINGS AND PROPERTIES

(A) [Buildings or properties which are owned by a government entity or where a government nexus is established are exempt from the requirements of this Ordinance.]

2. Starting on page 16, line 14, amend Section 14-25-7 of the *Downtown Dilapidation Ordinance* as follows:

§ 14-25-7 EXEMPTIONS.

[Buildings or properties which are owned by a government entity or where a government nexus is established are exempt from the requirements of this Ordinance.]

Explanation: This amendment removes the language related to government entities and government nexus in the Vacancy and Dilapidation sections. In New Mexico, government entities cannot directly fine or assign fees to each other.

**CITY COUNCIL
of the
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October 7, 2024

FLOOR AMENDMENT NO. _____ TO O-24-42

AMENDMENT SPONSORED BY COUNCILOR: Dan Lewis

1. On page 10, line 23, strike Section 14-24-9 of the *Downtown Vacant Buildings and Properties Ordinance* in its entirety.

~~§ 14-24-9 PRIVATE CAUSE OF ACTION RELATED TO VACANT BUILDINGS AND PROPERTIES. An owner of property within the boundaries of the Downtown Center may bring a civil action in a court of competent jurisdiction against another property owner within the boundaries of the Downtown Center for violations of the provisions of this Ordinance. Upon prevailing, the property owner complaining of a violation shall be entitled to recover the actual damage established by the complaining property owner, including, but not limited to, the decrease in value of property and rental value amounts, security costs required to protect personal property and personnel incurred because of the nuisance created by the vacant property, and any other appropriate legal or equitable relief.]~~

2. Rerumber subsequent subsections accordingly.

~~§ 14-24-10] [§ 14-24-9]~~

~~§ 14-24-11] [§ 14-24-10]~~

Explanation: This amendment strikes the private cause of action provision of the Ordinance from Section 1, the Vacancy Registration portion. This is the part of Section 1 that would give power to private property owners to bring civil action against another property owner.

Section 1. Downtown Vacant Buildings and Properties Ordinance
AND
Section 3. Downtown Dilapidation Ordinance

**CITY COUNCIL
of the
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October 7, 2024

FLOOR AMENDMENT NO. _____ TO O-24-42

AMENDMENT SPONSORED BY COUNCILOR: Joaquín Baca

1. On page 12, line 12, insert a new Section 14-24-12 into the *Downtown Vacant Buildings and Properties Ordinance* as follows:

[\$ 14-24-12 USE OF FEES, FINES, AND MONETARY PENALTIES.

100% of all registration fees, fines, and monetary penalties collected pursuant to this Ordinance shall be used for the purpose of:

- (1) **Funding enforcement activities under this Downtown Vacant Buildings and Properties Ordinance; and**
- (2) **Any excess funds shall be allocated to the Albuquerque Community Safety Department (ACS).]**

2. On page 17, line 24, insert a new Section 14-25-10 into the *Downtown Dilapidation Ordinance* as follows:

[\$ 14-25-10 USE OF FEES, FINES, AND MONETARY PENALTIES.

100% of all registration fees, fines, and monetary penalties collected pursuant to this Ordinance shall be used for the purpose of:

- (1) **Funding enforcement activities under this Downtown Dilapidation Ordinance; and**
- (2) **Any excess funds shall be allocated to the Albuquerque Community Safety Department (ACS).]**

Explanation:

F Section 1. Downtown Vacant Buildings and Properties Ordinance

AND

Section 3. Downtown Dilapidation Ordinance

This amendment proposes to require that all registration fees and any fines and monetary penalties recovered through enforcement actions brought under both the *Downtown Vacant Buildings and Properties Ordinance* and the *Downtown Dilapidation Ordinance* be utilized for the purpose of funding enforcement of these ordinances, and any excess funding would be allocated to ACS.

Both ordinances currently state: "To the extent that monetary penalties are recovered as a result of enforcement under this section, any funds so recovered shall be used exclusively for the purpose of funding enforcement activities under this section."

- Section 14-24-8(A)(3) of the *Downtown Vacant Buildings and Properties Ordinance* (page 10, line 16)
- Section 14-25-6(B) of the *Downtown Dilapidation Ordinance* (page 16, line 6)

This amendment would expand this requirement to say that registration fees collected under this Ordinance will likewise be used to fund enforcement of this ordinance.



**CITY COUNCIL
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October 7, 2024

FLOOR AMENDMENT NO. _____ TO O-24-42

AMENDMENT SPONSORED BY COUNCILOR: Dan Lewis

1. On page 13, starting on line 4, amend Section 14-25-3 of the *Downtown Dilapidation Ordinance* to read as follows:

Dilapidated [Commercial] Building or Property. Any building or property which exhibits one or more characteristic of dilapidation, ~~[including but not limited to]~~ ~~[as defined in the Dilapidated Commercial Buildings and Properties Ordinance § 14-20-1 et seq. ROA 1994.]~~

~~[(1) Overgrowth of fugitive plant materials including grasses or invasive trees; or landscaping that is otherwise non-compliant with the requirements of the zoning code, § 14-16-3-10(D)(3) and the Albuquerque Weed and Anti-Litter Ordinance, §§ 9-8-1 et seq. ROA 1994;~~

~~(2) Unsecure, loose, or broken building façades, treatments, fixtures, signs (including freestanding signs) or other façade features affecting the façade or sign area;~~

~~(3) Peeling or flaking paint, and any other significant deterioration of building surface treatments affecting the façade;~~

~~(4) Broken or uncovered glass within any window or door;~~

~~(5) Unsecured, loose, or broken features affecting any sign (including freestanding signs);~~

~~(6) Broken windows or building entrances, or any other characteristics demonstrating a lack of security or access control to the property, building or buildings at the site;~~

~~(7) Unabated vandalism or graffiti;~~

~~(8) Outdoor lighting that is no longer compliant with the minimum requirements of the zoning code;~~

~~(9) Broken pavement, interior sidewalks or pedestrian connections; unsealed cracks exceeding two feet in length and one inch in width, or potholes exceeding one square foot in area within off-street parking areas; or~~

~~(10) Unabated trespass, or police calls for service that are unrelated to~~



Section 3. Downtown Dilapidation Ordinance

~~any lawful use or business establishment at the location.]~~

Explanation: This amendment changes the definition of dilapidated building or property to incorporate the existing dilapidated commercial building or property reference. That definition differs in that it only applies to non-residential buildings or properties.

It also adds a threshold of at least 15% to qualify as dilapidated for the following: unsecured, loose, or broken facades treatments, fixtures, sign, or other façade features, peeling or flaking paint, and other significant deterioration of building surface treatments, or unsecured, loose or broken features affecting any sign.

As written, the bill considers defines dilapidation to include any instance of dilapidation, which could be as insignificant as a single paint flake. This matches existing law and encompasses a more reasonable threshold to begin enforcement.

**CITY COUNCIL
of the
CITY OF ALBUQUERQUE**

October 7, 2024

FLOOR AMENDMENT NO. _____ TO O-24-42

AMENDMENT SPONSORED BY COUNCILORS Joaquín Baca & Nichole Rogers

Amend the No Obstruction Zone Ordinance as follows:

1. On page 19, line 17, strike subsection (e) in Section 8-2-7-14(E)(2) in its entirety.

(2) No person shall obstruct the sidewalk through conduct including, but not limited to:

~~[(e) Carrying banners or signs, upon the sidewalk or footpath which actually causes an obstruction on the sidewalk or footpath; and]~~

2. On page 20, line 9, insert subsections (5) and (6) to Section 8-2-7-14(F) EXEMPTIONS.

(F) EXEMPTIONS. This Ordinance shall not apply to the following:

[(5) Street performers that include, but are not limited to, buskers, magicians, performance art, or fine artists. Such street performers shall ensure sidewalks or footpaths, driveways, and business entrances are unobstructed for pedestrian travel.

(6) Nothing in this Ordinance shall be construed to infringe upon any activity that is protected by the First Amendment of the United States Constitution, including but not limited to the freedom of speech and the right to assemble and protest.]

Explanation:

The first part of this amendment eliminates the prohibition of carrying signs and banners under Section E of the *No Obstruction Zones* portion of the ordinance.

The second part (5) of this amendment adds an exception under the "No Obstruction

H Section 5. No Obstruction Zone Ordinance

Zone" section for street performers, musicians or any other person who is contributing to the creative economy in our Downtown in the sidewalk space. The intent of the sponsor is to ensure that the bill doesn't not infringe upon parts of the existing Downtown culture that contributes to the uniqueness of the area.

The third part (6) of this amendment adds a new subsection to Section *(F) Exemptions* under the No Obstruction Zone Ordinance that reaffirms protections under the 1st amendment.

Section 5. No Obstruction Zone Ordinance

**CITY COUNCIL
of the
CITY OF ALBUQUERQUE**

October 7, 2024

FLOOR AMENDMENT NO. _____ TO O-24-42

AMENDMENT SPONSORED BY COUNCILOR Nichole Rogers

1. On page 20, line 9, within the *No Obstruction Zone Ordinance*, insert a new subsection in Section 8-2-7-14(F) EXEMPTIONS, as follows:

[(5) Nothing in this Ordinance shall be construed to infringe upon any activity that is protected by the First Amendment of the United States Constitution, including but not limited to the freedom of speech and the right to assemble and protest.]

Explanation:

This amendment adds a new subsection to Section (F) *Exemptions* under the *No Obstruction Zone Ordinance* that reaffirms protections under the 1st Amendment.

**CITY COUNCIL
of the
CITY OF ALBUQUERQUE**

October 7, 2024

FLOOR AMENDMENT NO. _____ TO O-24-42

AMENDMENT SPONSORED BY COUNCILOR Nichole Rogers

1. On page 19 amend Section 8-2-7-14(E)(2) of the *No Obstruction Zone Ordinance* by striking subsection (b) on lines 8-10 and striking subsection (g) on lines 22-23, and renumber subsections accordingly.

~~[(b)] Sleeping, sitting, kneeling, crouching or lying down along or across the sidewalk, in a way that infringes upon lawful pedestrian use, unless due to a medical emergency;~~

~~[(c)] [(b)]~~

~~[(d)] [(c)]~~

~~[(e)] [(d)]~~

~~[(f)] [(e)]~~

~~[(g)] Any conduct that deprives pedestrians of the intended use of the sidewalk or footpath; and~~

~~[(h)] [(f)]~~

~~[(i)] [(g)]~~

Explanation:

This amendment removes subsections (b) and (g) within section (E) *Wrongful Use of Sidewalks in No Obstructions Zones*. The removal of these subsections would eliminate the possibility of enforcement or fines for anyone who is sitting, kneeling, sleeping or crouching along the sidewalk or any participating in other conduct that deprives pedestrians of the intended use of the sidewalk.

K Section 5. No Obstruction Zone Ordinance

**CITY COUNCIL
of the
CITY OF ALBUQUERQUE**

October 7, 2024

FLOOR AMENDMENT NO. _____ TO O-24-42

AMENDMENT SPONSORED BY COUNCILOR Nichole Rogers

1. On page 20, line 26, in the *No Obstruction Zone Ordinance*, delete subsection 8-2-7-14-(G)(3) in its entirety:

~~[(3) If a violator receives three violations of the *No Obstruction Zone Ordinance*, they are subject to the General penalties provision Section 1-1-99.]~~

Explanation:

This amendment removes the escalating penalty structure for violations of the No Obstruction Zones Ordinance and only penalizes violators via the \$100.00 fine or 4 hours of community service.

**CITY COUNCIL
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October 7, 2024

FLOOR AMENDMENT NO. _____ TO O-24-42

AMENDMENT SPONSORED BY COUNCILOR: Joaquín Baca

1. On page 20, line 9, amend subsection (G) of the *No Obstruction Zone Ordinance* as follows:

(G) PENALTY.

(1) Prior to issuing a citation, the enforcement authority shall issue a written warning. This written warning shall include offering social services, including but not limited to behavioral and mental health services. If services are declined and/or the obstruction is not promptly remediated, then the enforcement authority may issue a citation.

(2) A violation constitutes a civil infraction punishable by a fine of \$100 or completion of four hours of community service.

(3)(2) A violator may elect service to the city as an alternative to payment of fines. A violator who elects the option of service to the city in lieu of payment of a fine does so voluntarily and is entitled to none of the benefits conferred upon city employees, including, without limitation, worker's compensation or the payment of any wages or benefits. The city is not responsible for damages incurred as a result of such service except as otherwise provided by law. The person seeking relief hereunder shall timely request the option of service to the city in lieu of payment of a fine. Services shall be rendered in not less than full hour increments and shall be credited against the fine payable at a rate of \$25 per hour. The Mayor or the Mayor's designee shall establish procedures for administering this paragraph including, but not limited to, the nature of services that may be performed, the

Section 5. No Obstruction Zone Ordinance

timeframe in which a respondent must complete their community service, and consequences for failure to complete community service.

(4)(3)

Explanation:

This amendment proposes language that would ensure that social services are offered before giving a citation for violating the *No Obstruction Zone* ordinance.