

RESOLUTION NO. R-19-22

NOTICE OF INTENT TO CONSIDER AN ORDINANCE

WHEREAS, NMSA (1978) § 4-37-1, et seq. provides that counties may adopt ordinances, not inconsistent with statutory or constitutional limitations placed on counties, to discharge those powers necessary and proper to preserve the health and to provide for the safety, order, comfort and welfare of the citizens of the county;

WHEREAS, the Board of Grant County Commissioners has determined that the health, safety and general welfare of the residents of Grant County have been greatly compromised by the opioid epidemic that has swept the nation;

WHEREAS, the Board desires to consider the adoption of an ordinance declaring the opioid epidemic and its effects on Grant County a public nuisance and allowing for its recovery of costs in relation to the opioid epidemic; and

WHEREAS, in order to consider such an ordinance, the Commission must publish notice of its intention to do so at least 14 days before the meeting at which the ordinance will be considered, in accordance with NMSA (1978) § 4-37-7.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF GRANT COUNTY, NEW MEXICO:

1. That an ordinance, entitled 2019 OPIOID COST RECOVERY AND PUBLIC NUISANCE ORDINANCE, to be introduced before the Board shall be filed with the County Clerk, and shall be considered by the Board at a regular meeting held on March 21, 2019, at 9:00 a.m. in the Commissioners' Chambers of the Grant County Administration Building, 1400 Highway 180 East, Silver City, New Mexico, in the County, being the regular meeting place of the Board.

2. That the following notice of intent shall be published one time in the Silver City Daily Press, a newspaper of general circulation in the County, following the adoption of this resolution:

(Form of Notice)

NOTICE OF INTENT TO CONSIDER AN ORDINANCE
GRANT COUNTY, NEW MEXICO

NOTICE IS GIVEN that the Board of County Commissioners, constituting the governing body of the Grant County, New Mexico will consider the adoption of an ordinance entitled: 2019 OPIOID COST RECOVERY AND PUBLIC NUISANCE ORDINANCE. The purpose of the new ordinance is to declare the opioid epidemic and its effects on Grant County a public nuisance and allow for Grant County to recover its costs in relation to the opioid epidemic's effects on Grant County and its citizens.

The Ordinance will be considered at a regular meeting of the Commission on Thursday, March 21, 2019, at 9:00 a.m., or as soon thereafter as the matter may be heard, in the Commissioners' Chambers in the Grant County Administration Building, 1400 Highway 180 East, Silver City, New Mexico, in the County, being the regular meeting place of the Board.

A copy of the Ordinance in draft form is on file and available for inspection during normal business hours at the office of the County Clerk at the Grant County Administration Building, 1400 Highway 180 East, Silver City, New Mexico, New Mexico.

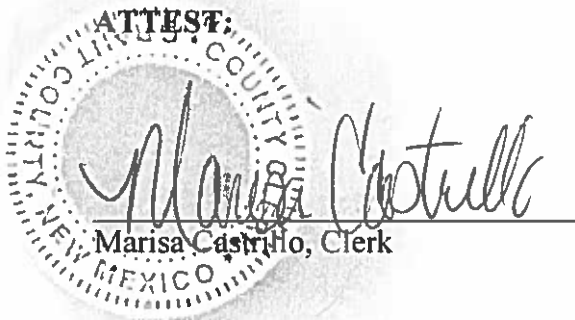
DATED: February 21, 2019.

Chris Ponce
Chairman, Board of County
Commissioners
Grant County, New Mexico

(End of Form of Notice)

PASSED, ADOPTED, SIGNED AND APPROVED THIS 21ST day of February 2019.

[seal]



**BOARD OF COUNTY COMMISSIONERS
GRANT COUNTY, NEW MEXICO**

Chris Ponce, Chairman

Javier Salas, Member

Alicia Edwards, Member

Gerald W. Billings Jr., Member

Harry Browne, Member

[illegible]

Commissioners: Chris Ponce
Javier Salas
Alicia Edwards
Gerald W. Billings, Jr.
Harry Browne

Absent: _____

The Board of Grant County Commissioners held a hearing where the following ordinance was considered:

GRANT COUNTY ORDINANCE NO. O-19-03

2019 OPIOID COST RECOVERY AND PUBLIC NUISANCE ORDINANCE

WHEREAS, the Grant County Board of Commissioners (“Board”) recognizes that an opioid epidemic is sweeping the country, and a cause of this increasing crisis is the overabundance of prescription opioids;

WHEREAS, vast amounts of prescription opioids were sold, distributed, and prescribed in the State of New Mexico, and specifically Grant County, over the past several years, a practice that continues today;

WHEREAS, the selling, distributing, and prescribing of large amounts of opioids in our community has created a public health and safety hazard affecting the residents of Grant County and has devastated families, wreaked havoc on our economy, and produced a generation of narcotic dependence;

WHEREAS, and as a result of the opioid epidemic, costs related to healthcare, family and social services, criminal justice, addiction and rehabilitation, and many other areas have significantly increased. Many of these costs are paid by Grant County;

WHEREAS, Grant County desires to recover these costs, despite the existence of the common-law municipal cost recovery rule (a.k.a. free public services doctrine) and declare the opioid epidemic and its effects on Grant County to be a public nuisance;

WHEREAS, when the Board became aware of the substantial impact that the opioid epidemic is having on Grant County and its citizens, it concluded that it must take action as soon as possible, including the adoption of this Ordinance;

WHEREAS, NMSA (1978) § 4-37-1, et seq. provides that counties may adopt ordinances, not inconsistent with statutory or constitutional limitations placed on counties, to discharge those powers necessary and proper to preserve the health and to provide for the safety, order, comfort and welfare of the citizens of the county;

WHEREAS, the Board duly published notice of its intention to consider the present ordinance at least 14 days prior to the present meeting, in accordance with NMSA (1978) § 4-37-7; and

WHEREAS, the Board held an open public hearing on the consideration of the present ordinance at which there was an opportunity for public comment.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF GRANT COUNTY, NEW MEXICO:

I. Purpose and intent.

The purpose and intent of this Ordinance is to allow Grant County to recover its costs associated with the opioid epidemic, such as costs related to healthcare, family and social services, criminal justice, addiction and rehabilitation, and many other areas associated with the opioid epidemic, despite the existence of the common-law municipal cost recovery rule (a.k.a. free public services doctrine) and to declare the opioid epidemic and its effects on Grant County a public nuisance. Specifically, Grant County provides services related to the opioid epidemic, which are funded by tax revenues. This statute clarifies that reimbursement may be sought for the costs of providing such services, whenever practicable, from the responsible party. To accomplish this, Grant County establishes this cost recovery procedure and declares the opioid epidemic and its effects on Grant County a public nuisance.

II. Definitions.

“Costs” means all expenditures related to the opioid epidemic that directly or indirectly arise from Grant County’s response to a responsible party’s action or inaction.

“Responsible party” means any person or corporation whose negligent, intentional, or otherwise wrongful conduct causes the incident resulting in Grant County incurring costs or who is found liable or made responsible by a court for the costs incurred by Grant County in the form of damages, regardless of the cause of action.

III. Governmental function cost recovery.

Grant County may recover the costs of governmental functions related to opioids marketed, sold, manufactured, dispensed, prescribed, and/or distributed by the responsible party. If a responsible party fails to pay the costs demanded, Grant County may initiate and recover costs through administrative, civil, and/or criminal action against the responsible party. In that case, Grant County may also recover attorney’s fees, interest, and any other payment or type of damages the court deems proper.

IV. Effect of criminal or civil proceedings on governmental function cost recovery.

The initiation of administrative or civil proceedings for governmental function cost recovery does not bar the criminal prosecution of a responsible party for any associated violation. Similarly, criminal prosecution does not bar civil collection of costs for the violation giving rise to the criminal prosecution.

V. Public nuisance.

Grant County hereby finds and declares the following:

- 1) That addiction to and abuse of opioids is one of the greatest challenges facing the Grant County;
- 2) A cause of this increasing crisis is the overabundance of prescription opioids. Vast amounts of prescription opioid pain pills were sold, distributed and prescribed in Grant County over the past several years, which practice continues today;
- 3) There is evidence showing that approximately four in five heroin users began their addiction by first using and then misusing prescription pain medications containing opioids;
- 4) The selling, distributing, and prescribing of large amounts of opioid pain pills in Grant County has created a public health and safety hazard affecting the residents of Grant County, resulting in devastation to Grant County families, a negative effect on the Grant County economy, wasted public resources, and a generation of narcotic dependence;
- 5) That selling, distributing, and prescribing of prescription opioid pain pills is a hazard to public health and safety, which has created a public nuisance to the citizens of Grant County, and said nuisance remains unabated;
- 6) That, in addition to all other powers and duties now conferred by law upon it, Grant County is authorized to enact ordinances, issue orders, and take other appropriate and necessary actions for the elimination of hazards to public health and safety and to abate or cause to be abated anything which Grant County determines to be a public nuisance;
- 7) That manufacturers of prescription opioids and those in the chain of distribution have wrongfully abused the privilege of selling and/or providing medication to our residents and must be held accountable; and
- 8) That it is the duty of Grant County to vindicate the rights of its citizens and take action to abate this public nuisance.

VI. Retroactive application.

This legislation applies retroactively.

[SIGNATURES ON FOLLOWING PAGE]

PASSED, APPROVED, AND ADOPTED, by the Governing Board of Grant County, New Mexico, this 21st day of March 2019.

Board of Grant County Commissioners:

[SEAL]

ATTEST:

Marisa Castrillo,
Grant County Clerk

Chris Ponce, Chairman

Javier Salas, Member

Alicia Edwards, Member

Gerald W. Billings Jr., Member

Harry Browne, Member

Commissioner _____ then moved that the ordinance as filed with the County Clerk at this meeting be **approved OR disapproved**. Commissioner _____ seconded the motion;

The question being upon the passage and adoption of the ordinance, the motion was voted upon with the following result:

Those Voting Yea:

Those Voting Nay:

Those Absent:

The Chairman thereupon did ____ or did not ____ declare that at least a majority of all the members of the Board having voted in favor thereof, the motion was carried and the ordinance was **adopted OR not adopted**.

After consideration of matters not relating to adoption of the Ordinance, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

Chairman

[SEAL]

Attest:

Marisa Castrillo, County Clerk

[illegible]

I, Marisa Castrillo, County Clerk of Grant County, New Mexico (the "County"),
certify:

1. The foregoing pages constitute a full and correct copy of the record of the proceedings taken by the Board of County Commissioners of the County (the "Board") at a public meeting thereof held on March 21, 2019, so far as said minutes relate to consideration of an ordinance, a copy of which is therein set forth (the "Ordinance").

2. Notice of such meeting and hearing of March 21, 2019, was given by publishing a notice of the Board's intent to consider the Ordinance by publication in the *Silver City Daily Press*. An affidavit of publication with respect to such notice is **attached as Exhibit A**. In addition, notice of the meeting was given in compliance with the permitted methods of giving notice of meetings of the Board as required by the open meetings standards then in effect, *i.e.*, the County's Open Meetings Resolution.

3. The Chairman and members of the Board were present at said meeting, and the members of the Board held a hearing for the consideration of the Ordinance as set forth in such record of proceedings.

5. No other business concerning the Ordinance was taken at said meeting.

[seal]

**Marisa Castrillo,
County Clerk**

EXHIBIT A

**(Attach Affidavit of Publication of Notice of
March 21, 2019 Meeting as published
in the *Silver City Daily Press*)**