

1 order partially suspending sentence, convicting him for having an inoperable vehicle
2 contrary to Las Cruces Municipal Code (LCMC), Section 18-37. Unpersuaded that
3 Defendant demonstrated error in his docketing statement, we issued a notice of
4 proposed summary disposition, proposing to affirm. Defendant has responded to our
5 notice, opposing summary affirmance. After due consideration of Defendant’s
6 arguments, we remain unpersuaded. We, therefore, affirm.

7 {2} On appeal, Defendant challenges the sufficiency of the evidence to support his
8 conviction for having an inoperable vehicle on grounds that the LCMC provisions
9 required that he be given notice to remove the nuisance before a criminal complaint
10 could be filed. [DS 1; MIO 1-6] Defendant contends that the language used in the
11 provisions requiring notice for abatement of a public nuisance is mandatory. [MIO 2-
12 5] The problem with Defendant’s argument is that he is conflating the abatement-of-a-
13 nuisance process with the enforcement of prohibited nuisances.

14 {3} As we explained in our notice of proposed affirmance, the notice provisions in
15 the LCMC relating to nuisances apply to municipal actions to remove or abate a
16 nuisance; those notice provisions do not apply to a violation of the ordinance
17 prohibiting a nuisance—which prohibits a person from leaving an inoperable vehicle
18 “upon any private or public property within the city for a period of time in excess of
19 72 hours.” Section 18-37. Our notice further explained that the penalty in Section 18-

1 45 for interfering with municipal abatement efforts after notice is given is separately
2 and specifically addressed within the provisions relating to inoperable vehicles.
3 Defendant was punished under the “General Penalty” provision, Section 1-10, for
4 “[d]oing an act that is prohibited . . . by rule or regulation authorized by ordinance[.]”
5 Section 1-10(a)(1). Section 18-37 of the LCMC that Defendant was convicted for
6 violating is entitled, “Prohibited,” and describes *inter alia* the act of leaving an
7 inoperable vehicle on property within the city for longer than 72 hours.

8 {4} We are not persuaded that violation of Section 18-37 required the City of Las
9 Cruces to notify Defendant that he had an inoperable vehicle nuisance before filing
10 a criminal complaint. Also, as we indicated in our notice, it appears that under the
11 circumstances Defendant was or should have been aware of the presence of a nuisance
12 on his property. [RP 6, 32] For the reasons stated in our notice and in this opinion, we
13 affirm the district court’s judgment and sentence.

14 {5} **IT IS SO ORDERED.**

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JAMES J. WECHSLER, Judge

17 **WE CONCUR:**

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MICHAEL E. VIGIL, Chief Judge

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2 **TIMOTHY L. GARCIA, Judge**