

**SAN JUAN COUNTY, NEW MEXICO
TRASH AND REFUSE DISPOSAL ORDINANCE
ORDINANCE NO. 73**

AN ORDINANCE DEFINING SOLID WASTE, REFUSE, AND RELATED TERMS; PROHIBITING THE MAINTENANCE OR STORAGE OF TRASH AND REFUSE IN ANY PLACE OTHER THAN A STATE-LICENSED LANDFILL EXCEPT WHERE SUCH TRASH AND REFUSE IS HELD IN SPECIFIED TEMPORARY STORAGE CONTAINERS; PROHIBITING THE DEPOSIT OF TRASH OR REFUSE ON ANY PUBLIC OR PRIVATE PROPERTY, EXCEPT IN A LICENSED LANDFILL; PROVIDING FOR A GRACE PERIOD FOR THE REMOVAL OF TRASH AND REFUSE DEPOSITS THAT EXIST ON THE DATE OF ADOPTION OF THIS ORDINANCE; PROVIDING PENALTIES FOR VIOLATIONS; AND PROVIDING THE MANNER OF ENFORCEMENT.

ARTICLE 1. GENERAL PROVISIONS

Section 1.1 Short Title

This Ordinance may be referred to as the "Trash and Refuse Disposal and Accumulation Ordinance."

Section 1.2 Purpose

The Board of County Commissioners finds that the deposit of trash and refuse on premises in the County outside a landfill licensed by the State of New Mexico poses substantial risks to the public health, safety, and welfare; and provides a definition of "solid waste" that incorporates the types of trash and refuse at which this Ordinance is directed.

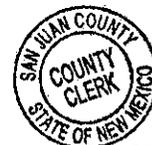
Section 1.3 Intent

Although this Ordinance contains penalties as provided under New Mexico law, it is the intent of the Board of County Commissioners in adopting this Ordinance to obtain the maximum possible compliance with the Ordinance rather than to impose penalties. This Ordinance shall be enforced and construed in such a way that it will encourage compliance.

Section 1.4 Authority

This Ordinance is adopted under the authority of the following provisions of New Mexico law: NMSA 1978, Section 4-37-1 (County Ordinances); NMSA 1978, Section 4-37-3.A (Enforcing County Ordinances); and NMSA 1978, Section 3-18-17 (Nuisances and Offenses; Regulation or Prohibition).


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ARTICLE 2. DEFINITIONS AND CONSTRUCTION

Section 2.1 General

Words not defined in this section shall be given their common, ordinary meanings unless the context clearly requires otherwise. "Shall" is always mandatory and not merely directory. The masculine includes the feminine. The singular includes the plural, where appropriate.

Section 2.2 Definitions of Specific Words

For the purpose of this Ordinance, the following terms, phrases, words, and derivations shall have the meanings given herein.

AGRICULTURAL USE means the use of land for the production of plants, crops, trees, forest products, orchard crops, livestock, poultry, captive deer or elk, or fish. The term also includes the use of land that meets the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

LARGE VOLUME RECEPTACLE means refuse receptacles of four cubic yards or greater capacity, sometimes called "dumpsters."

OCCUPANT means the person in possession of the premises where trash or refuse has been deposited or has accumulated.

PERSON means an individual, firm, association, corporation, partnership, or other entity.

PREMISES as applied to private property shall be construed as follows: any tract or parcel of land shown on a single tax schedule or subject to a single property tax bill shall be considered a single "premises," regardless of whether the legal description may refer to multiple lots, parcels, or tracts.

PRIVATE PROPERTY means any real property which is not public premises, and includes inhabited, developed, undeveloped, commercial, and residential property.

PUBLIC PREMISES means any and all streets, alleys, or other public ways, and all public parks, spaces, grounds, and buildings.

ROLL-CART means the wheeled container used for automated curbside collection of residential and some commercial solid waste.

SOLID WASTE means garbage, trash, refuse, and other solid materials, including solid waste materials resulting from industrial, commercial, construction, and from community activities. This definition does not include:



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- A. Drilling fluids, produced waters and other non-domestic wastes associated with the exploration, development or production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy;
- B. Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion;
- C. Waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore, coal, copper, molybdenum and other ores and minerals;
- D. Agricultural waste, including, but not limited to, manures and crop residues returned to the soil as fertilizer or soil conditioner;
- E. Cement kiln dust waste;
- F. Sand and gravel;
- G. Solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1342 or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et seq.;
- H. Densified refuse-derived fuel; or
- I. Any material regulated by Subtitle C of the Federal Resource Conservation and Recovery Act of 1976, substances regulated by the Federal Toxic Substances Control Act or low-level radioactive waste.

ARTICLE 3. NUISANCE DECLARED

Section 3.1 Public Nuisance Declared

Based on the findings set forth in ARTICLE 1 of this Ordinance and for the purposes set forth therein, the Board of County Commissioners declares that the accumulation, deposit, burial or burning of solid waste in any location other than a solid waste disposal facility or a solid waste incinerator permitted under the New Mexico Solid Waste Act, Article 9 of Chapter 74 of the New Mexico statutes, is a public nuisance.

Section 3.2 Prohibition on Disposal

No person shall accumulate, burn, bury, or dispose of solid waste on any premises other than a solid waste disposal facility or a solid waste incinerator permitted under the New Mexico Solid Waste Act, Article 9 of Chapter 74 of the New Mexico statutes. No owner or occupant of premises that is not a solid waste disposal facility or incinerator permitted under the Solid Waste



Act shall knowingly allow any other person to burn, bury, or dispose of solid waste on such premises. This section shall not, however, be construed to prohibit any of the following:

- A. The disposal of solid waste by the normal or usual use of garbage disposal units or sanitary sewer facilities;
- B. The normal use of fireplaces or wood-burning stoves;
- C. The burning of fields and irrigation ditches, and the trimmings, as part of the normal course of an agricultural use;
- D. Composting of wastes generated on the premises when conducted in a container or using methods designed to eliminate or reduce odors and to minimize potential attraction or breeding of rodents and vermin; or
- E. The temporary storage of solid waste in a large-volume receptacle, roll-cart, or trash can provided by a solid waste collection company.

Section 3.3 Maintenance of Unsanitary and Hazardous Premises Prohibited

The maintenance of unsanitary conditions on a property shall be a violation of this Ordinance by the occupant and, if the owner has actual notice of such maintenance, by the owner. The County may provide the owner with actual notice by sending a letter to that effect with documented delivery (no signature required) to the most recent address to which property tax bills have been sent. "Unsanitary conditions" for purposes of this Section shall be the deposit, storage, or accumulation of refuse, trash, rubbish, or human or animal wastes on a premises other than a state-licensed sanitary landfill or other disposal facility.

Section 3.4 Littering Prohibited

No person shall scatter, throw, place, dispose of or deposit solid waste in or upon any sidewalk, street, open space, alley, storm sewer, street gutter, or any other area within the confines of the County.

Section 3.5 Transitional Provision

Any person with open trash or refuse on a premises on the effective date of this Ordinance shall have a grace period to come into compliance with this Ordinance. The grace period shall end on the last day of January, 2012. Waste that has been completely buried on a site prior to January, 2012, need not be removed unless an action by a state or federal agency requires such removal.

ARTICLE 4. ENFORCEMENT

Section 4.1 Procedures for Voluntary Compliance

In case of a violation of this Ordinance involving the deposit, burial, or maintenance of solid waste on a premises, the County shall send a notice of violation to the occupant of the premises (if any) and to the owner of the property, as determined from the property tax records. Such notice shall specify what steps must be taken to abate the stated conditions. If the person or persons to whom the notice is sent fail(s) to take the specified action within a period of 30 days from receipt of notice, the County may file a complaint in a court of competent jurisdiction alleging a violation of this Section. If the person(s) fails to take the required action within the specified time, the County may abate the nuisance for such person. If the County so acts after proper notice, the costs of abatement shall be a liability of the occupant of the property; and, if the owner was given notice in accordance with this Section 4.1, the costs of abatement shall be a liability of the owner, jointly and severally with the occupant(s). The County may bring an action at law or use other lawful means to recover the costs of abatement. The Board of County Commissioners may establish a fee for abatement costs annually by resolution.

Section 4.2 Penalties

Any person found guilty of a violation of this Ordinance shall be subject to a fine not to exceed \$1,000. Separate penalties may be imposed for each violation. A notice of violation under Section 4.1 is not a prerequisite for a prosecution under this Section.

Section 4.3 Hardship Relief

Upon receipt of a notice of violation, an owner or occupant of property may file a hardship appeal with the County in accordance with the following provisions:

- A. The applicant must be a natural person and a San Juan County resident for a minimum of 90 days (three months) immediately prior to the date of the hardship appeal.
- B. The application for hardship appeal shall be made on a form provided in the County Clerk's office and shall include any and all information required by the Community Development Administrator, including, but not limited to:
 1. Statement of need.
 2. Proof of income for twelve (12) months immediately prior to date of service. Income limits shall be established from time to time by resolution.
 3. Proof of liquid assets/resources demonstrating total (aggregate) household assets/resource limits of an amount established from time to time by resolution.



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- C. Following submission of a complete application, including all required information, the application for hardship relief shall be considered by the Community Development Administrator.
- D. If the Community Development Administrator determines that the applicant has demonstrated a hardship situation, then the applicant shall be eligible to enter into an Agreement for Abatement, which will include the following provisions:
 1. The applicant will be relieved of the obligation to abate the nuisance;
 2. The County will agree to apply for dismissal of any complaint filed against the applicant in regard to the existing violation(s) or alleged violation(s) and will agree not to file any future complaint against the applicant in regard to the existing violations or alleged violations;
 3. The applicant will agree to cease and desist from the unlawful disposal of trash or refuse in violation of this Ordinance and will acknowledge that the County may pursue all available remedies under this Ordinance for future violations, without regard to need; and
 4. The County will place the abatement of the nuisance on the site on a list of projects for County abatement, to be completed by the County at its discretion, as funds are available for such purpose.
- E. A grant of hardship relief to an owner shall not relieve the occupant of possible penalties or abatement under this Ordinance.
- F. A grant of hardship relief to an occupant shall not relieve the owner of possible penalties or abatement under this Ordinance.
- G. A complete hardship application must be filed before a judgment is entered in any action in Magistrate Court. No hardship application will be accepted or considered after a judgment is entered in Magistrate Court involving the same property and the same party(ies).

ARTICLE 5. SEVERABILITY

The provisions of this Ordinance are severable, and if any provision, sentence, clause, section, or part hereof is held illegal, invalid, or unconstitutional, or inapplicable to any person or circumstance, the illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance or its application to other persons or circumstances. It is hereby declared to be the intent of the County that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included herein, and if the person or



circumstances to which this Ordinance or any part hereof are inapplicable, had been specifically exempted therefrom.

PASSED, APPROVED AND ADOPTED this 17th day of August, 2010.

**BOARD OF COUNTY COMMISSIONERS
OF SAN JUAN COUNTY, NEW MEXICO**

By: _____

Ervin Chavez
Ervin Chavez, Chairman



Debbie Holmes
Debbie Holmes, County Clerk

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