

NAPK# 252-2

ORDINANCE NO. 99-03-01

3690

AN ORDINANCE PROVIDING FOR THE EFFICIENT
AND SANITARY COLLECTION OF SOLID WASTE IN GRANT COUNTY
PROVIDING FOR MANDATORY DISPOSAL AND ASSESSMENT OF FEES AND
PROVIDING A PENALTY FOR VIOLATION OF THE ORDINANCE

WHEREAS, the Grant County Board of Commissioners finds the following Ordinance necessary to provide for the efficient and sanitary collection, transportation, recycling and disposal of solid waste in Grant County; and

WHEREAS, a mandatory system of solid waste collection is necessary in order to protect the environment of Grant County from illegal dumping and control of litter occasioned by the lack of an effective County wide system of refuse collection; and

WHEREAS, it is necessary that a mandatory solid waste collection program be implemented in order to protect the health, welfare and safety of the citizens of Grant County; and

WHEREAS, the Grant County Board of Commissioners is delegated the authority pursuant to Section 4-56-1 et seq. N.M.S.A. 1978 "...establish and maintain, manage and supervise a system of storage, collection and disposal of all refuse.", and

WHEREAS, the Grant County Board of Commissioners have participated in establishing the Grant County Solid Waste Authority for the purpose of providing a coordinated Regional program for the collection of solid waste in cooperation with the incorporated municipalities of Silver City, Bayard, Hurley, and Santa Clara; and

Ordinance # 99-03-01
AMENDED
with another 4/14/00
dated:

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STATE OF NEW MEXICO
County of Grant

I hereby certify that this instrument
was filed for record on the 24
day of MARCH A.D. 1999
at 8:21 o'clock AM and duly
recorded in book 252 of the records
of ORDINANCES
at page 3690-3705

Witness my hand and seal of office
COUNTY CLERK, GRANT CO., N.M.

Deputy

WHEREAS, the Grant County Board of Commissioners find it necessary to provide a fair and equitable procedure to allocate the cost of the solid waste system among the residents and businesses outside the municipalities.

NOW THEREFORE, BE IT RESOLVED BY THE GRANT COUNTY BOARD OF COMMISSIONERS AS FOLLOWS:

SECTION 1: GOVERNING POWER

All persons and real estate, residential and commercial, within Grant County, excluding those within the territorial boundaries of the Town of Silver City, City of Bayard, Villages of Hurley and Santa Clara, New Mexico, are governed by this ordinance.

SECTION 2: SHORT TITLE

This Ordinance shall be referred to as the Solid Waste Collection and Disposal Ordinance of the County of Grant, New Mexico.

SECTION 3: DEFINITIONS

As used in the Ordinance:

"Garbage" is defined as all waste food, swill, carrion, slops and all waste from the preparation, cooking and consumption of food and from the handling, storage and sale of food products and the carcasses of animals, also tin cans, bottle, ashes and all such similar items.

"Recyclable Material" is defined as materials that would otherwise become solid waste if not recycled and that can be collected, separated or processed and placed in use in the form of raw materials, products or densified - refuse - derived fuels.

"Recycling" is defined as any process by which recyclable materials are collected, separated or processed and reused or returned to in the form of raw materials or products.

"Refuse" is defined as all junked parts or bodies of automobiles, tires, waste paper, paper cartons, cardboard, wood, glass, plastics, discarded furniture or appliances, liquid petroleum waste, such as motor oil and all such similar items, and all other unwholesome material of every kind not included as garbage or debris.

"Debris" is defined as all waste building material, bricks, concrete blocks, shingles, roofing material, lumber, metal or plastic piping, commercial construction wastes and any other matter that is commonly know as debris.

"Responsible party" is defined as the owner of any premise, whether vacant, improved or unimproved, used primarily for either a private resident or business purpose, who is responsible for payment of the mandatory fee for collection.

"Owner" is defined as the property owner, whether residing in said premises or not, the property on which premises occupies being outside the corporate boundaries of the municipalities of Silver City, Bayard Hurley , and Santa Clara, within the County of Grant.

"Solid Waste" is defined as garbage, refuse and/or debris of any kind generated by an individual, household or commercial establishment.

"Composting" is defined as the process by which biological decomposition of organic solid waste is carried out under controlled conditions so it can be used in an

environmentally acceptable manner. Materials are trees, tree branches, yard trimmings or clippings, leaves and pine needles.

"Premises" is defined as an improved or unimproved structure, whether designed for private or commercial use, located on any property outside the corporate limits of the municipalities of Silver City, Bayard, Hurley, and Santa Clara in the County of Grant and is the unit upon which mandatory fees are assessed and collected.

"County Manager" is the chief administrative assistant to the Grant County Board of Commissioners.

"Hauler" is any person who collects refuse of solid waste from any property not owned by that person.

"Litter" is refuse or debris found in public areas or generated while traveling in a motor vehicle.

"Landfill" is a facility designed for the disposal of refuse and solid waste, permitted in accordance with NMED regulations and this Ordinance.

"Residential" is defined as single family dwelling.

"Commercial" is defined as entities operating as a business and not defined as residential.

"Convenience Center" is a location maintained and operated by the County or its designated agent for the disposal and transfer of solid waste and recyclables.

"Solid Waste Director" is the County's employee responsible for the Solid Waste System.

"Code Enforcement Officer" is the person appointed by the County Commission and/or the Sheriff's office to enforce portions of this ordinance.

SECTION 4: ACCUMULATION OF GARBAGE, REFUSE, SOLID WASTE AND LITTER; REMOVAL; PENALTY

A. No person shall cause to accumulate upon premises owned, leased or occupied by him which are within two hundred (200') feet of another inhabited premises, any garbage or litter except in covered water-tight containers made of metal or plastic.

B. No person shall throw, place dump or dispose of any solid waste or litter on any road, street, gutter, sidewalk or alley.

C. No person in control of the property or that causes such action shall cause or permit to remain upon any property, private or public, any solid waste or composition of residue thereof which is in an unsanitary condition or hazardous to public health.

D. Any unauthorized accumulation of solid waste is hereby declared to be a nuisance and is unlawful.

E. No person shall cast, place, sweep or deposit anywhere within the County, any solid waste or litter in such a manner that it may be carried or deposited by the elements upon any road, street, sidewalk, alley, sewer, parkway or other public place within the County.

F. Subject to any limitations or otherwise provided by law, the Sheriff or the designate code enforcement office is authorized to inspect and enter any private property or private premises where he/she has reasonable cause to suspect that unlawful accumulations of solid waste, refuse or litter may exist.

1. If, upon the basis of such inspections, the Sheriff or Code Enforcement Officer find that any of Subsections A-E of this section have not been complied with or that a violation exists, he/she shall notify the person in charge of the premises (whether owner, tenant, lessee, manager or other person), where the unlawful solid waste, refuse or litter accumulations exist, to properly correct such conditions within a designated period of time from ten (10) days up to thirty (30) days.

2. Upon the failure, neglect or refusal of any person, owner, tenant, lessee, manager or occupant to properly correct any such conditions as set forth herein, within the time prescribed (or within ten (10) days for the return of such prescribed notice undeliverable if the notice is served by mail), the Grant County Board of Commissioners may contract for the correction of the unlawful accumulation, or order its correction by the County, at the expense of the person, owner, tenant, lessee, manager or occupant in charge of the property.

3. The cost of correction shall be a lien upon the property and shall remain in full force and effect for the amount due plus interest at the legal rate from the date of the filing of the lien until paid and all other costs, including attorney fees. The lien shall be enforced and foreclosed according to applicable state law.

G. Where the Sheriff finds that a clear and present danger exists to the public health, welfare, and safety due to certain unlawful accumulations of solid waste, or litter and immediate measures are required to alleviate this clear and present danger, the County Manager may waive the ten (10) day notification period.

H. Costs for correction of unlawful accumulations of solid waste, or litter shall be determined on the basis of man worked hours and equipment at a customary rental rate per day, plus any direct costs paid by the County to correct the accumulation.

I. Nothing in paragraph F. of this Section shall be construed to require any notice before the filing of a Magistrate Court action for a civil or criminal violation of this Section.

J. Penalty. Violation of this Section, in addition to any other costs assessed for the clean up of illegally stored or deposited solid waste or litter shall be punishable under the Provisions of Section 16 of this Ordinance.

SECTION 5: SOLID WASTE; PRE-COLLECTION PRACTICES.

A. Solid waste and recyclables are to be properly stored on the premises where they are generated, shall be place and maintained in County containers, Grant County Convenience Centers or other refuse and solid waste disposal facility or solid waste hauler that is franchised, licensed and permitted in conformance with applicable state law, state regulations and this Ordinance.

B. It shall be the responsibility of all persons to dismantle and/or flatten all boxes regardless of construction before placing the same in County refuse containers.

C. Garbage disposed of in containers provided by the County shall be first deposited in bagged and closed containers.

D. Fireplace ash which has not cooled or is otherwise capable of rekindling or igniting a fire if brought in contact with combustible materials, shall not be deposited in County refuse containers.

E. Prohibited materials will not be place in County containers as defined in Section 6 of this Ordinance.

SECTION 6: PROHIBITED MATERIALS IN COUNTY CONTAINERS.

A. Poisons, acids, caustics, chemicals, liquid petroleum or oil, waste contaminated by infectious deceases, radioactive waste, dead animals, live pests, rocks, sand, dirt, concrete, bricks and building materials, toxic, highly flammable or explosive materials shall not be placed in containers for regular collection, but shall be disposed of in accordance with any applicable state and federal laws or regulations, at the expense of the person accumulating the waste.

B. Yard waste, including grass and tree clippings, pine needles, leaves and cut weeds shall not be placed in refuse containers provide by the County, but shall be deposited in a convenience station, composting facility, an approved landfill or in accordance with any applicable state and federal laws or regulations at the expense of the person accumulating the same.

SECTION 7: REFUSE CONTAINERS

A. Commercial haulers are expressly prohibited from the use of County containers or convenience centers for the disposal of refuse and solid waste collected on a fee basis. Violations are subjected to the penalties provided in Section 16 of this Ordinance.

B. Mobile home parks. Every mobile home park shall provide for the collection of solid waste weekly. If the Solid Waste Director determines that additional refuse containers are

necessary, he/she may order such additional containers as may be required to prevent excessive solid waste, litter or any hazard to the public or residents of the park.

C. Condominiums/Multi-family Residential Units. Every condominium or multi-family residential development consisting of ten (10) or more units shall provide for the collection of solid waste weekly. If the Solid Waste Director determines that additional refuse containers are necessary, he/she may order such additional containers as may be required to prevent excessive solid waste, litter or any hazard to the public or other residents of the residential development.

D. All users of County refuse containers shall comply with the rules and regulations established by the County for the use, care and location of such containers and shall keep the lids and covers furnished for such containers closed at all times except when they are being filled or emptied.

E. All refuse and solid waste shall be placed in the container provided by the County and shall be reduced in size to no more than four (4') feet in length. No items in excess of these dimensions or weighing more than fifty (50) pounds shall be placed in the refuse containers provided by the County.

F. In the event that the refuse container provided by the County is full, refuse or solid waste shall not be placed on the ground or in proximity to the container so as to constitute a litter or health hazard or the possibility that the refuse may become blown and scattered.

G. It is unlawful to impede access to a County container other than necessary for the time to remove and deposit garbage in the receptacle.

SECTION 8: DAMAGE TO REFUSE CONTAINERS

- A. It is prohibited for any person, including children, to be on or in the containers for any purpose.
- B. It is unlawful to intentionally damage any refuse container owned or leased by the County.
- C. Any individual who damages any such container provided for the County residents shall be liable to the County for the cost, repair or replacement of such container, in addition to the penalties provided in Section 16 of this Ordinance.

SECTION 9: CONSTRUCTION SITES AND TRANSPORTATION OF MATERIALS

- A. All persons who have secured a state building permit shall, before the start of any construction activity in the County, furnish or place on those premises a container or fenced area of suitable size and design to contain all solid waste or litter which may be disturbed or removed from the premises by the wind or elements. Within five (5) days of completion, all solid waste and refuse containers shall be removed from the premises.
- B. No person generating refuse or solid waste shall allow solid waste or litter of any kind to be blown or to be carried by the elements from the premises for which the building permit was secured.
- C. Persons engaged in demolition, who have obtained a State permit, shall remove the solid waste and litter, including structural parts, from the construction site and contain their elements from scattering in the same manner as set out above. Demolition solid waste shall be removed and disposed of within five (5) days of completion to an approved transfer station or solid waste landfill.

D. All persons who have secured a state building permit shall produce proof of disposal (such as receipts, canceled checks, invoices) at an approved facility as governed by NMED and this Ordinance when requested by the County's Solid Waste Director, County Manager, Sheriff's Department, Code Enforcement Officer or NMED Representative. The County or State representative will allow reasonable time for the person to provide proof of disposal, within 10 days of the request.

SECTION 10: SCAVENGING PROHIBITED

It is unlawful for any person not authorized by the County to remove, collect or disturb the refuse, solid waste or recyclables stored in a County convenience center or container. No person shall remove any refuse, solid waste or recyclables from a container and/or scatter the same upon any public or private property. Recyclables once deposited at the County's recycle points become the property of the County.

SECTION 11: REGULATIONS ADOPTED

The laws of the State of New Mexico dealing with solid waste management and all regulations promulgated and published pursuant to those laws for the New Mexico Environment Department (or any successor department, agency or division), along with any subsequent revisions or amendments to such laws or regulations, are hereby adopted and incorporated herein by this reference and made a part of this Ordinance; provided, however, the penalty provisions provided herein shall apply to violations prosecuted under this Ordinance.

SECTION 12: POWERS OF THE COUNTY

In connection with the operation of a mandatory solid waste collection system, the Grant Board of Commissioners may:

- A. Execute contracts or franchise agreements on behalf of the County, with any municipality, county other local unit of government, including the Grant County Solid Waste Authority, or any private entity for the collection, transportation and disposal of solid waste generated in the unincorporated areas of Grant County;
- B. Regulate the collection, transportation and disposal of solid waste by any entity performing services on behalf of Grant County in the unincorporated areas of Grant County;
- C. Establish, assess and collect fees directly or through its authorized agent from responsible parties for the solid waste collection system in amounts sufficient to pay the necessary costs of the collection, transportation and disposal system;
- D. Coordinate the collection, transportation and disposal for solid waste in consultation with the New Mexico Environment Department.

SECTION 13: MANDATORY FEE

- A. Participation in the solid waste collection system is mandatory on each responsible party in the unincorporated areas of Grant County except as provided in Section 15 herein.
- B. The Grant County Board of Commissioners shall set fees for solid waste collection based on the actual cost to collect, transport and dispose of such solid waste.
- C. No system of fees will be established or changed unless and until a public hearing is held, after twenty days notice to the public, to establish or modify the mandatory fee.
- D. Such notice of public hearing shall be published once in a newspaper of general circulation within the boundaries of Grant County at least fifteen (15) days prior to such hearing.

E. The following shall be the rates for the solid waste collection systems:

1. Residential Rate: The solid waste collection systems rate shall be five dollars (\$ 5.00) per month for each premises located in the unincorporated area of Grant County, to be billed and paid quarterly.

2. Commercial Rate: Commercial solid waste collection systems rate shall be determined by a class rating with those commercial premises generating a higher volume of solid waste receiving the highest rating. The County Solid Waste Director and/or County Manager will evaluate and determine the correct class for each commercial premises in the unincorporated area of the County. The following table shall dictate the rate to be paid monthly.

Class A: Small Commercial : Ten Dollars (\$10.00)

Class B: Medium Commercial: Twenty-Five Dollars (\$25.00)

Class C: Large Commercial: Forty Dollars (\$40.00)

Class D: Exceptions: This classifications is reserved for commercial accounts that require special consideration. The County Solid Waste Director and/or County Manager would evaluate the commercial account to assess a rate that is applicable to the solid waste volumes generated by that commercial account.

F. Revenues generated from the sale of recyclables shall be invested in the recycling efforts to offset the expenses of the program.

G. All fees shall be collected and paid to the Grant County Treasurer or an agent appointed by the Grant County Board of County Commission.

SECTION 14: LIENS

A. All fees arising under this Ordinance shall be payable by the responsible party of the tract or parcel of land at the time the rate or charge accrues and becomes due and the County of Grant shall be entitled to a lien upon the tract or parcel of land being served pursuant to the authority granted under Section 3-36-1 et seq. N.M.S.A. 1978 and Section 4-37-1 et seq.

N.M.S.A. 1978; which lien shall be a first and prior lien on the property coequal with municipal liens pursuant to Section 3-26-2 NMSA 1978, but subject only to the lien of general state and county taxes.

B. The lien provided for in this Section shall be enforced in the manner prescribed in Section 3-36-1 through 3-36-7 NMSA 1978. for purposes of this Section, such action shall be taken by the Grant County Clerk. In any proceedings where pleadings are required, it shall be sufficient to declare generally for the service supplied for the collection, transportation and disposal of solid waste. Notice of the lien shall be filed in the manner provided in Section 3-36-1 NMSA 1978, and the effect of such filing shall be governed by Section 3-36-2 NMSA 1978.

C. The charges and fees imposed herein are the responsibility of the responsible party of the premises, regardless of whether occupied by an owner, tenants, or others, and the County may file a lien against the property for such charges, penalties and attorney's fees incurred in the cost of filing the lien.

SECTION 15: EXCEPTION PROCEDURES

A. A owner may request a variance of the solid waste collection fee if the landowner has at least one hundred twenty (120) contiguous acres of land with adequate disposal sited per household. The owner will be responsible to submit the variance request for approval by the Solid Waste Director.

B. The owner or tenant shall only dispose of solid waste in accordance with any regulations of the Solid Waste Bureau or the New Mexico Water Quality Control Commission as determined by the New Mexico Environment Department.

SECTION 16: PENALTIES

A. Persons violating the Ordinance shall, upon conviction, be subject to a fine not to exceed THREE HUNDRED (\$300.00) DOLLARS and/or NINETY (90) days in jail for each separate offense except as set forth in Paragraphs B and C below.

B. Persons violating this Ordinance by discarding or disposing of solid waste or litter on public or private property in any manner other than disposing it in an authorized container, convenience center, or landfill shall, upon conviction, be subject to a fine not to exceed ONE THOUSAND (\$1,000.00) DOLLARS.

C. Each violation shall constitute a separate offense. Each day an offense continues shall also constitute a separate offense.

SECTION 17: SEVERABILITY

In the event any Section, part or subpart of the Ordinance shall be determined to be in violation of the Constitution or Statutes of the State of New Mexico by a court of competent jurisdiction, that Section shall be stricken and be thereafter unenforceable. Such determination shall not invalidate the application or enforcement of the remaining Sections.

3705

SECTION 18: EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days after being enacted by the Board of County Commissioners of Grant County and published in the manner in which County Ordinances are recorded by the Clerk of Grant County.

BOARD OF COUNTY COMMISSIONERS

OF GRANT COUNTY

Maurice I. Serva

Chairman

Member

Paul W. Scholl

Member

Member

Paul W. Scholl

Member

ATTEST:

Paul W. Scholl

Grant County Clerk

APPROVED:

By: _____

Grant County Attorney

