

STATE OF NEW MEXICO } SS.

County of Luna

I certify that this instrument was filed  
for record at 2:20 P. M. 1998

Book 27 Page 407

LUNA COUNTY ORDINANCE NO. -34-

APR 13 1998  
and recorded in Book 27 page 407  
Not Public Record  
Reception No. 48-2168

LUNA COUNTY LITTER CONTROL, SALVAGE YARD  
AND BEAUTIFICATION ORDINANCE

AN ORDINANCE PROVIDING FOR THE PREVENTION OF  
LITTERING AND UNSIGHTLY REFUSE WITHIN LUNA COUNTY;  
THE SCREENING OF SALVAGE YARDS WITHIN LUNA COUNTY;  
THE ABATEMENT OF NUISANCES CAUSED BY LITTER AND REFUSE; AND  
PROVIDING PENALTIES, CIVIL REMEDIES, SEVERABILITY  
AND EFFECTIVE DATE

WHEREAS, the Luna County Board of Commissioners finds that  
unsightly and unhealthy conditions caused by littering, the  
improper disposal of waste and refuse, the dumping of refuse upon  
public rights of way and public lands, and the proliferation of  
unscreened salvage yards result in a significant detriment to the  
health and safety of residents of Luna County;

WHEREAS, the Luna County Board of Commissioners finds that  
provisions are necessary to supplement voluntary anti-litter and  
beautification measures currently in place; and

NOW, THEREFORE, BE IT ORDAINED BY THE LUNA COUNTY BOARD OF  
COMMISSIONERS as follows:

**SECTION 1. SHORT TITLE**

This Ordinance shall be known as the "Litter Control and Beauti-  
fication Ordinance", and shall be referred to herein as "this  
Ordinance".

**SECTION 2. AUTHORITY**

This Ordinance is enacted pursuant to the authority granted to  
counties to provide for the safety and preserve the health of the  
residents of the county as set forth in Section 4-37-1 NMSA 1978

**SECTION 3. INTERPRETATION AND CONFLICT**

The regulations provided herein are held to include the minimum  
standards necessary to carry out the purposes of this Ordinance.  
This Ordinance is not intended to interfere with, abrogate or  
annul any other valid ordinances or statute. In the event the  
provisions of this Ordinance conflict with other County rules,  
regulations or ordinances pertaining to the subject matter  
herein, the provisions of this Ordinance shall be controlling.

**SECTION 4. DEFINITIONS**

Definitions - the following definitions apply to this Ordinance.

- A. "County Commission" is the Luna County Board of Commis-  
sioners.

State of New Mexico )

County of Luna

I certify the within to be a true copy of the  
above titled instrument on file and of record  
in my office.

WITNESS my hand and seal this

26 day of September, 2006

*Brian Amey*  
COUNTY CLERK, LUNA COUNTY

DEMING, NEW MEXICO  
by *Jason M. Jaxon* Deputy



B. "Refuse" shall mean any garbage, household waste, waste paper, waste containers, empty packaging, empty paper bags, empty plastic bags, empty drink containers, empty plastic containers, empty or used styrofoam containers or packing material, used magazines or newspapers, empty metal cans or containers of any kind, any material that is discarded after residential or commercial use, scraps of building materials, materials resulting from the demolition of any structure or vehicle, used grease, used oil, used vehicle parts, used appliance or machinery parts, used tires, discarded household furnishing, discarded cleaning materials and any material commonly known as trash or junk that has no financial or commercial value in its present discarded form. Refuse does not include:

- 1) 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;
- 2) agricultural waste, including, but not limited to, manures and other crop residues returned to the soil as fertilizer or soil conditioner;
- 3) sand and gravel;
- 4) 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.;
- 5) any material regulated by Subtitle C of the federal Resource Conservation and Recovery Act, or substances regulated by the federal Toxic Substance Control Act;
- 6) salvage materials as defined below;

C. "Property" shall mean any area, plot, or parcel of land in Luna County which is under a common ownership or is separately identified for assessment by the Luna County Assessor's Office. Property shall include land under the ownership of the United States, the State of New Mexico, or any local government or school district entity. This definition is intended to be inclusive and not limiting, and shall therefore include all land within the boundaries of Luna County, New Mexico, except that the definition of property, and therefore this ordinance, shall exclude property that is assessed

by the Luna County Assessor's Office as agricultural property and used for farm or ranch purposes. Property shall not include any land within the boundaries of the City of Deming or the Village of Columbus, or any hereafter incorporated municipality.

- D. "Property Owner" shall mean the Person who is the record owner of any Property according to the records contained in the Luna County Clerk's Office and/or the Luna County Assessor's Office.
- E. "Property Occupant" shall mean any Person who is occupying any Property, whether by legal right or without legal right.
- F. "Person" shall mean any individual, partnership, company, corporation, firm, association, trust, estate, state and federal agency, institution, county, city, town, village or municipality or other legal entity, however organized.
- G. "Litter", "to Litter" or "Littering" shall all mean the same thing, namely, the act of placing, discarding, broadcasting, throwing, tossing, or allowing the spreading or broadcasting of Refuse onto any property or location not officially designated as a solid waste or refuse disposal facility, and shall include all such acts committed by a person occupying a motor vehicle.
- H. "Refuse Container" shall mean any enclosed and securely covered container designed and functioning to store or contain refuse temporarily pending its transportation and disposal at an officially designated solid waste or refuse disposal facility. Refuse Containers must be securely covered.
- I. "Salvage Materials" shall mean any inoperable motor vehicles, inoperable construction equipment, inoperable agricultural equipment, inoperable machinery, inoperable major household appliances, and accumulations of scrap metal or used building materials which are kept together in one location or on any Property for the commercial purpose of selling same, repairing same or recycling parts from same into other like objects. The keeping of such salvage materials on Property shall result in the existence of a "Salvage Yard."
- J. "Salvage Yard" shall mean any Property upon which Salvage Materials in quantities described below are stored, kept or otherwise located:
  - 1) four or more inoperable vehicles;
  - 2) four or more inoperable major household appliances;

- 3) four or more inoperable pieces of construction equipment;
- 4) four or more inoperable pieces of agricultural equipment brought in from another piece of Property; or
- 5) scrap metal, used building materials, used household furnishings or goods, or other used materials or goods which cover any area of one acre or more for at least one year;

Property shall be deemed a "Salvage Yard" even if the items are kept for private, non-commercial purposes.

**SECTION 5. PROHIBITED ACTS**

- A. No person shall Litter.
- B. No person, property owner, or property occupant shall place, permit or allow the accumulation of Refuse on any Property within Luna County except within a Refuse Container or at an officially designated solid waste or Refuse disposal facility. A criminal complaint for violation of this section will not issue until the procedures under Section 8B(1)(2) have been completed.
- C. No person shall transport any Refuse in a vehicle or trailer that is not securely fastened and covered so as to prevent the escape of Refuse from the vehicle or trailer.

**Section 6. VIOLATION: ENFORCEMENT**

Any Person who commits any of the acts prohibited above shall, upon conviction, be subject to the following penalties in accordance with §4-37-3 NMSA:

- 1) a fine not exceeding One Thousand Dollars (\$1,000.00);
- 2) imprisonment for not more than ninety days;
- 3) both a fine and imprisonment;
- 4) any other penalty, including community service as may be provided by law. The use of uniform traffic citation forms is authorized for use in enforcement of this ordinance except as otherwise provided.
- 5) For purposes of enforcement, during the 180 day period following the effective date of this

ordinance, only warning citations identifying violations of the ordinance will be issued. Upon the expiration of the 180 day period, the ordinance shall be fully enforced, and appropriate citations shall be issued accordingly.

**SECTION 7. SALVAGE YARDS**

- A. Any Salvage Yard established after the effective date of this Ordinance shall be adequately screened as defined below.
- B. Any Salvage Yard existing on the effective date of this Ordinance shall have a four (4) year amortization period from the effective date of this Ordinance to be adequately screened from any public right of way or from any residential Property within 1,000 yards of the Salvage Yard.
- C. "Adequately Screened," for purposes of this section, shall mean solid or opaque fencing, or trees, bushes, or other vegetation that is of sufficient height and density to fully obscure the view of the Salvage Materials from a point eight feet above the ground on any public right of way or any residential property within 1,000 yards.
- D. Any Salvage Yard existing on Property that is sold or conveyed to a new owner shall within 90 days of the sale be adequately screened, or the Salvage Materials fully removed from the Property.
- E. Any Person, Property Owner, or Property Occupant that commits or knowingly allows the commission of any act in violation of this Section 7 shall, upon conviction, be subject to the same penalties as set forth in Section 6 above.

**SECTION 8. NUISANCE; NOTICE**

- A. Any condition which violates the terms of this Ordinance shall be deemed a Nuisance both public and private in nature.
- B. In addition to the criminal penalties provided for herein, any such nuisance, after reasonable efforts to secure voluntary compliance with this Ordinance have failed, shall be subject to abatement as follows:
  - 1) Notice of Nuisance: Any authorized County employee, upon observing any violation of this Section, shall issue a notice directed to the owner of record of the property on which the nuisance occurs, or to the occupant or tenant of the property, or both. The notice shall describe the viola-

tion and shall establish a reasonable time limit for abatement thereof by the owner or occupant or tenants, which limit shall not be less than ten (10) days or more than thirty (30) days after service of the notice. The notice may be served either personally or by registered mail at the owner's or occupant's last known address.

- 2) Complaint: In the event the owner or occupant of the property where the nuisance violation exists, has failed, within the prescribed time, to abate the nuisance, then any authorized County employee, shall file a complaint charging violation of this ordinance with the Magistrate Court or District Court demanding that the owner of the property, or the occupant thereof, or both, be held to answer to the Court for the violation.
  - 3) Removal Of Nuisance: In the event that a person is convicted of violating this Section and still refuses to remove the junk, trash or refuse, the County or aggrieved Property Owner may enforce this Section in any manner consistent with law. The County may remove or contract for the removal of junk, trash or refuse at the expense of that person, and shall assess the person for the costs of removal. Should the person refuse or fail to pay the assessment, the County shall collect such assessment as provided by law.
  - 4) Injunctions: The County or aggrieved Property Owner, when a nuisance exists as set forth herein, may institute civil proceedings in Magistrate Court or District Court to enjoin all persons from maintaining or permitting the nuisance and to abate the same and for civil damages as may be appropriate. Costs and attorney's fees shall be elements of damage in any proceeding.
- C. For purposes of compliance with Section 8B(1) above, any person who receives the notice described in that section, for a violation of Section 5B of this ordinance, may request deferral of enforcement action and assistance in removal of refuse for abatement purposes. The County shall provide such assistance one day each month. The person, upon receiving notification of the violation, shall have 10 days from the date of notification to request assistance to abate the nuisance. If the request is not timely made to the Luna County Manager's office within that 10 day period, or if the person does not abate the nuisance directly within the time prescribed in the notice of nuisance, the ordinance shall be enforced accordingly.

For purposes of this section, timely shall be defined as within twenty days of receipt of the notice of nuisance provided for in Section 8B(1).

**Section 9. SEVERABILITY**


If any article, section, subsection, paragraph, sentence, clause, phrase, provision or portion of any article, section, subsection, paragraph, sentence, clause, phrase or provision of this Ordinance is, for any reason, held to be unconstitutional, invalid or void, the remaining portions shall not be affected since it is the express intention of the Luna County Board of Commissioners to pass such article, section, subsection, paragraph, sentence, clause, phrase or provision and every part thereof separately and independently from every other part.

**Section 10. EFFECTIVE DATE**

This Ordinance shall be recorded and authenticated by the County Clerk following adoption by the Board of County Commissioners. The effective date of this Ordinance shall be thirty days after the Ordinance has been recorded.


PASSED, APPROVED AND ADOPTED this 3<sup>rd</sup> day of March, 1998, by the Board of County Commissioners of Luna County, New Mexico.

BOARD OF COUNTY COMMISSIONERS  
LUNA COUNTY, NEW MEXICO

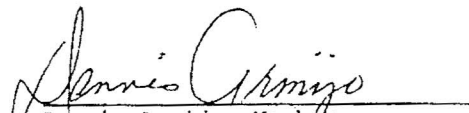
  
Marilyn S. Offutt, Chairwoman

  
Natalie Pacheco, County Clerk

APPROVED AS TO LEGAL SUFFICIENCY:

  
Ruth S. Coleman, Member

  
Kent Cooper, County Attorney

  
Dennis Armijo, Member

