

LUNA COUNTY NUISANCE ABATEMENT ORDINANCE NUMBER 74

AN ORDINANCE TO PROVIDE FOR THE PREVENTION OF UNSIGHTLY OR OFFENSIVE CONDITIONS IN LUNA COUNTY, THE SCREENING OF SALVAGE YARDS, THE ABATEMENT OF NUISANCES AS DEFINED IN THIS ORDINANCE AND FOR THE PROVISION OF PENALTIES, CIVIL REMEDIES, SEVERABILITY AND EFFECTIVE DATE.

Whereas, the Luna County Board of County Commissioners finds that the unsightly and unhealthy conditions caused by littering, the improper disposal and dumping of refuse or waste tires, the dumping of refuse upon public rights of way and public lands, the poor maintenance and repair of property including buildings and other structures, the proliferation of unscreened salvage yards and towing operations, and the proliferation of unmanaged private burial sites, result in significant detriment to the health, safety and prosperity of Luna County and its residents; and

Whereas, the Luna County Board of County Commissioners deems it necessary and desirable to prescribe standards to help maintain property values and the property tax base in Luna County, and to provide an aesthetically attractive community; those are necessary to supplement voluntary anti-litter and beautification measures to abate unsightly and unhealthy accumulations of debris and trash including waste tires; and

Whereas, Section 3-18-5, NMSA 1978 provides for a local government to remove dangerous buildings or debris; and

Whereas, Section 4-37-1 NMSA 1978 provides all counties are granted the same powers as municipalities, and included in this grant of powers are those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the order, comfort and convenience of Luna County and its inhabitants;

NOW, THEREFORE BE IT ORDAINED BY THE LUNA COUNTY BOARD OF COUNTY COMMISSIONERS AS FOLLOWS:

ARTICLE 1 GENERAL PROVISIONS

- 1.1 **SHORT TITLE:** This Ordinance shall be known as the "Nuisance Ordinance", and shall be referred to herein as "this Ordinance".
- 1.2 **JURISDICTION:** This Ordinance shall provide for the regulation of littering; nuisances; dangerous buildings; salvage yards; towing operations; dealers, wreckers and dismantlers; burial and disposal of human remains; and waste tires within the County, but not within the boundaries of municipalities.
- 1.3 **INTERPRETATION AND CONFLICT:** The regulations provided herein are held to be the minimum standards necessary to carry out the purposes of this Ordinance. This Ordinance is not intended to interfere with, or abrogate or annul any other valid ordinance 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 prevail.
- 1.4 **MEANING OF TERMS:** Wherever the terms "Luna County Planning Director", "County Planning Director", "Luna County Planner" appear in this Ordinance they shall be read and understood as including any other person or position authorized by the County Manager or the County Board of County Commissioners to administer or otherwise carryout the requirements of the Ordinance.
- 1.5 **PURPOSE:** Every owner of property in Luna County is entitled to the peaceful enjoyment of his/her property free from any interference caused by the unlawful act or failure to perform a duty by any other person in the County, or by any other person suffering or permitting any condition or thing to be or exist; which act, omission, condition or thing either:
 - A. Injures or endangers the comfort, repose, health or safety of others; or
 - B. Offends decency; or
 - C. Is offensive to the sense; or



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- D. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any public road, highway, sidewalk, stream, ditch, or drainage; or
- E. In any way renders other persons insecure in life to the use of property; or
- F. Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

This Ordinance establishes certain duties that owners of property owe to the community.

1.6 ILLUSTRATIVE ENUMERATION

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are declared to be and constitute a nuisance; provided however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

1. Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things;
2. Any condition that provides harborage for rats, mice, snakes, flies, mosquitoes, injurious insects, termites, and other vermin;
3. The carcasses of animals or fowl not disposed of within a reasonable time after death;
4. The pollution of any public or private well or cistern, stream, lake, arroyo, canal or body of water by sewage, dead animals, industrial wastes or other substances;
5. Discarding, discharging, releasing, scattering, throwing, sweeping or dumping either intentionally or unintentionally of litter, paper, cans, bottles, packaging, refuse, trash, construction waste, building materials or garbage into the public right of way, onto the private property of other persons or into the environment;
6. Junked, inoperative, wrecked, dismantled, partially dismantled, discarded, unused, or unlicensed mobile homes, recreational vehicles or trailers, except in an authorized, permitted salvage yard;
7. Discarded or unused machinery or appliances, or parts thereof, or the accumulation of material that creates an unsafe, unsightly condition or a harborage for disease vectors or other vermin except for such items located in an authorized, permitted salvage yard;
8. Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained.

1.7 DEFINITIONS:

“Acceptable” shall mean: a) accepted by the Luna County Building Official, or New Mexico State Building Official, with respect to matters set out in this Ordinance; b) accepted by the Luna County Fire Marshall, or other authority designated by the County Manager with respect to matters under the NFPA Fire Protection Code; and c) accepted by the Luna County Code Compliance Officer with respect to the standards set out in this Ordinance.

“Agriculture” An agricultural use or activity requires a tract containing five (5) or more contiguous acres in active, current use for the production of farm crops for sale and profit, including vegetables, fruit, cotton, grain and other crops and the processing of crops to the generally recognizable minimum level of marketability and storage thereof on the premises; the open range grazing of livestock or irrigated pasture for grazing livestock; animal and poultry husbandry, dairy operations, floriculture and horticulture; and accessory uses customarily incidental to agricultural activities; provided further that agriculture does not include commercial slaughter houses, meatpacking plants, fertilizer yards, or other similar animal related uses.

“Agricultural Building” shall mean a structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products. This structure shall not be a place of human habitation or a place of employment, where agricultural products are processed, treated or packaged, nor shall it be a place used by the public.

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“Baled Tire” or “Tire Bale” shall mean a method of volume reduction of waste tires, whereby whole or cut tires are compacted into a bundle and then banded together to form a tire bale. Baled tires shall not be considered processed tires and shall be defined as solid waste, unless they incorporated into some beneficial use project.

“Building Official” shall mean the officer, or official, or inspector or other designated authority charged with the administration and enforcement of any Code, or the building official’s duly authorized representative.

“Burial” shall mean the process of interring human remains.

“Cemetery” shall mean a place dedicated to and used and intended to be used for the permanent interment of human remains.

“Certificate of Compliance” shall mean a certificate issued to the property owner by the Luna County Code Compliance Officer or other designated County official, or a New Mexico State Building Official evidencing the fact that the requirements of this ordinance as set forth in this Ordinance, have been met.

“Code” shall mean a standard that is an extensive compilation of provisions covering broad subject matter or that is suitable for adoption into law, any adopted uniform code pertaining to construction activities.

“Code Compliance Officer” shall mean the person designated by Luna County to enforce various County codes or ordinances.

“County” shall mean Luna County, New Mexico.

“County Commission” shall mean the Board of County Commissioners of Luna County.

“Cut Tire” shall mean a waste tire from which the tire face, tread, or sidewall has been cut or removed for beneficial use. A cut tire shall consist of pieces greater than 18 inches on any one side.

“Grave” shall mean a lot, plot or burial space and means a space of ground used for, or intended to be used for, the permanent interment of human remains.

“Human Remains” or “Remains” shall mean the body of a deceased person, regardless of its stage of decomposition, and cremated remains.

“Inspector” shall mean the Luna County Building Inspector or the Code Compliance Officer or a person duly delegated by the Luna County Building Inspector or the Code Compliance Officer, or a person instructed or requested by the Luna County Building Inspector or the Code Compliance Officer to provide a written report with respect to any matter set out in this Ordinance.

“Interment” shall mean the disposition of human remains by entombment, inurnment or burial.

“Junked Mobile Home” shall mean any abandoned, disassembled, dismantled, uninhabitable, severely damaged or wrecked mobile home.

“Junked Vehicle” shall mean any abandoned, disassembled, dismantled, inoperable or wrecked vehicle, including a Recreational Vehicle.

“Litter”, “to litter” or “littering” shall mean the act of placing, discarding, broadcasting, throwing, tossing, or allowing the spreading or broadcasting of refuse or debris onto any property or location or site not officially designated as a solid waste or refuse disposal facility, and shall include all such acts by a person occupying a motor vehicle.

“LCBO” shall mean the Luna County Building Official; see also Inspector and Building Official.

“Maintained” shall mean to carry out any repairs, reconstruction, refinishing, or replacement of any part or parts of a building or structure or property, and maintained shall also mean the upkeep, attention, and care of grounds.

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“Manufactured Home” shall mean a movable or portable housing structure over 32 feet in length or over eight feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two or more units separately towable but designed to be joined into one integral unit, as well as a single unit. “Manufactured Home” does not include recreational vehicles or modular or pre-manufactured homes built to IBC standards, designed to be permanently affixed to real property. “Manufactured Home” includes any movable or portable housing structure over twelve feet in width and forty feet in length, which is used for non-residential purposes.

“Mobile Home” shall mean a moveable or portable housing structure larger than forty feet in body length, eight feet in width or eleven feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes that is not constructed to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974, and the Housing and Urban Development Zone Code 2 or the International Building Code, as amended to the date of the unit’s construction or built to the standards of any municipal building code.

“Notice of Nuisance” shall mean the notice issued by any authorized County Employee directed to the owner, occupant or tenant of property in Luna County setting out the violations and the time limits for abatement of the violations under this Ordinance.

“Nuisance” shall mean knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority, or failure to perform a duty which creates any of the outcomes identified in Article 1, Section 1.5 of this Ordinance.

“Occupancy” shall mean the purpose that a building, or part thereof, is used or intended to be used.

“Officer” shall mean the Code Compliance Officer of Luna County, the person designated by Luna County to administer and enforce various codes and ordinances.

“Owner” shall mean any person, agent, firm or corporation having a legal or equitable interest in the property.

“Parcel” shall mean a unit of land capable of being described by location and boundaries and not dedicated for public or common use.

“Permit” shall mean an official document or certificate issued by the building official, the County Planner, or other authorized authority, as appropriate, authorizing performance of a specified activity.

“Person” shall mean a natural person including any individual, partnership, company, corporation, firm, association, trust, estate, foundation, state and federal agency, institution, county, city, town, village, or municipality or other legal entity, however organized.

“Processed Tire” shall mean a tire that has been processed through grinding, shredding, or other means, thereby producing a material that is readily suitable for marketing into product manufacturing, energy recovery, or other beneficial reuse markets. Waste tires that have been compacted, baled, cut, or shredded without a suitable market shall not be considered processed tires and shall be regulated as solid waste.

“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 within the boundaries of the City of Deming and the Village of Columbus, and any hereafter incorporated municipality.

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“Property Occupant” shall mean any person who is occupying any property, whether by legal right or without legal right.

“Property Owner” shall mean the person who is the recorded owner of any property according to the records contained in the Luna County Clerk’s Office.

“Recreational Vehicle” shall mean a self contained driven or towed portable unit not designed to be installed on a temporary or permanent foundation nor used for human occupancy as a residence which includes: pickup campers, chassis mounted motor homes, mini motor homes, park trailers, recreational vans, pop-up tent/hard-top trailers converted busses, or other converted and chopped vehicles.

“Refuse” shall mean any organic or inorganic waste or debris, including, but not limited to, garbage, household waste, wastepaper, waste containers, empty packaging, empty or used plastic bags or other plastic containers, empty drink containers, empty or used Styrofoam containers, empty metal cans or containers of any kind, any material that is discarded after residential or commercial use, scraps of building materials such as wood, brick, concrete, asphalt, metal, and plastic, materials resulting from the demolition of any structure or vehicle, used grease, used oil, used vehicle parts, used appliances or machinery parts, used tires, discarded household furnishings and equipment, junked parts or bodies of automobiles and other metallic junk or scrap, discarded cleaning materials, and any material commonly known as trash or junk.

Refuse does not include:

- a) 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;
- b) agricultural waste, including, but not limited to, manure and other crop residues returned to the soil as fertilizer or soil conditioner;
- c) sand and gravel;
- d) 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-produce material as defined by the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et seq. and subsequent amendments;
- e) any material regulated by Subtitle C of the federal Resource Conservation and Recovery Act, or substances regulated by the federal Toxic Substance Control Act; and,
- f) salvage materials as defined in this Ordinance which are contained within an official, legally established Salvage Yard.

“Repair” shall mean the reconstruction, renewal, refinishing or refurbishing of all or any part of an existing building or structure, or property for the purpose of its maintenance.

“Salvage Materials” shall mean any inoperable motor vehicles, inoperable construction equipment, inoperable agricultural equipment, inoperable machinery, inoperable major household appliances, any unused or junked manufactured or mobile homes intended to be dismantled, 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 or bartering same, repairing same, or recycling parts from same into other like objects. Such salvage materials are permitted only in an official, legally established salvage yard.

“Salvage Yard” shall mean any property upon which salvage materials may be legally stored in the quantities described below:

- a) four or more inoperable vehicles;
 - b) any unused or junked manufactured or mobile home to be dismantled;
 - c) four or more inoperable major household appliances;
 - d) four or more inoperable pieces of construction equipment;
 - e) four or more inoperable pieces of agricultural equipment, brought in from another property;
- or,

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- f) scrap metal, used building materials, and used household furnishings or goods, or other used materials.

“Sewage” shall mean residential wastes, commercial wastes, industrial wastes, and any drainage, but does not include storm water.

“Sewerage System” shall mean a system for transporting sewage owned and operated by Luna County, or a private disposal system approved by the state of New Mexico Environmental Department.

“Shall” shall be construed as mandatory.

“Site” shall mean a parcel of land or several contiguous parcels of land used or occupied, or to be used or occupied, by a building and accessory buildings and the area belonging to such buildings, bounded by a property line or a designated portion of a public street.

“Solid Waste” shall mean and includes, but is not limited to any garbage, rubbish, refuse, rejected or waste food, offal, swill, carrion, ashes dirt, slop, wastewater, trash, weeds, briars, brush, junk automobiles or automobile parts, waste or unwholesome material of any kind, except sewage, and including residential, commercial, institutional, industrial and recreational waste.

“Street or Road” shall mean all property dedicated or intended for public or private access to property, or subject to public easements therefore.

“Structure” shall mean that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. Without limiting the generality of the foregoing, structure shall include a wall, fence, sign or billboard.

“Towing Service” shall mean the use of specialized equipment, including repossession services using towing equipment, to transport:

- a) a damaged, disabled or abandoned motor vehicle and its cargo;
- b) a motor vehicle to replace a damaged, disabled or abandoned motor vehicle;
- c) parts and equipment to repair a damaged, disabled or abandoned motor vehicle;
- d) a motor vehicle whose driver has been declared unable to drive by a law enforcement officer;
- e) a motor vehicle whose driver has been removed from the scene or is unable to drive; or,
- f) a motor vehicle repossessed or seized pursuant to lawful authority.

“Use” shall mean the use for which land or buildings are occupied or maintained, arranged, designed, or intended.

“Used Tire” shall mean a tire that previously has been on a vehicle but that retains suitable tread depth and is free of damage or defects so that it may be safely returned to its original purpose.

“Waste Tire” or “Scrap Tire” shall mean a tire that is no longer suitable for its originally intended purpose because of wear, damage or defect. This definition shall include a tire mounted on a rim but not on a vehicle.

Words not Defined: Any word or term not defined in this Ordinance shall have the meaning ascribed to it in the Luna County Subdivision ordinance or the Luna County Zoning ordinance or the Deming/Luna County Extra-Territorial Zoning regulations, or they shall have their ordinary accepted meaning within the context with which they are used.

ARTICLE 2 DANGEROUS BUILDINGS

- 2.1 DEFINED: The term ‘dangerous building’ as used in this chapter is defined to mean and to include:

1. Any dwelling or other building, with the exception of certain agricultural buildings that still serve the purpose of storage of agricultural equipment, supplies, tools, or parts, which is ruined, damaged and dilapidated and is dangerous or injurious to the public health, comfort, peace, or safety of the occupants of the dwelling, the

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occupants of neighboring dwellings or other residents of the area because of its condition, or which has a blighting influence on properties in the area. The conditions may include the following without limitations: defects increasing the hazards of fire, accident or other calamities, lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness; overcrowding; inadequate ingress and egress; inadequate drainage; or any violation of health, fire, building or any other regulations relating to the use of land and the use and occupancy of buildings and improvements;

Any such 'dangerous building' in the County is declared to be a nuisance.

- 2.2 It is unlawful to maintain or permit the existence of any dangerous building in the County or the failure to repair, remodel or renovate a building so designated or moved within the County; and it is unlawful for the owner, occupant, or person in custody of any dangerous building to permit the same to remain in a dangerous condition, or to occupy such building or permit it to be occupied while it remains in a dangerous condition.

ARTICLE 3 MANUFACTURED HOME/MOBILE HOME SALVAGE PURPOSE

- 3.1 No manufactured home/mobile home shall be transported or moved into, or installed on any site in Luna County for the purpose of salvaging parts or components of such homes for private or personal use or for sale to others, except that such homes may be transported to a licensed salvage yard.
- 3.2 For the purpose of this ordinance, no manufactured home or mobile home shall be installed, parked or located on any site, lot, tract or parcel of land to be used for any purpose other than that for which the manufactured home or mobile home was designed or intended. No person shall use any manufactured home or mobile home for the sole purpose of the storage of any goods or materials, or for any purpose other than that for which the manufactured home or mobile home was designed or intended.

ARTICLE 4 SEWAGE

- 4.1 Sewage from residential and non-residential buildings shall be discharged only into a waste disposal system permitted and approved by the New Mexico Environment Department, except privies.

ARTICLE 5 SALVAGE YARDS

5.1 SALVAGE YARDS REGULATIONS

- 5.1.1 Salvage Yards must be legally established in compliance with the laws prevailing in Luna County, and all applicable State and Federal environmental laws and regulations. The owner/operator is responsible for identifying all hazardous materials used, processed, stored or handled at the facility and for maintaining updated qualitative and quantitative records of these materials at the facility.

The abandonment or unauthorized release of hazardous materials is prohibited. No person shall cause, permit, suffer, or allow the usage, storage, abandonment or disposal of hazardous material:

- a) in a manner which violates a provision of any federal, state, or local government regulations; or
- b) in a manner which causes, or may cause, an unauthorized release of hazardous material.

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- 5.1.1.1 All hazardous material shall be properly stored and be accessible to inspection at anytime.
- 5.1.1.2 Only salvage yards licensed by the New Mexico Department of Motor Vehicles may carry on or conduct the active trade or business of dismantling any vehicle for the resale of parts. Any person possessing more than three (3) wrecked, dismantled or partially wrecked or dismantled vehicles and selling or offering for sale a used part and who regularly sells or offers for sale used vehicles or used vehicle parts shall be presumed to be conducting the business of wrecking or dismantling a vehicle for the resale of the parts.
- 5.1.1.3 Any legally established Salvage Yard shall be adequately screened as defined below.
- 5.1.2 Any Salvage Yard existing on the effective date of this Ordinance shall, be adequately screened from any public right of way or from any residential property within two hundred (200) yards of the Salvage Yard.
- 5.1.3 "Adequately Screened" for purposes of this Section, shall mean solid or opaque fencing, or trees, shrubs or other vegetation that is of sufficient height and density to fully obscure the view of the salvage materials from a point eight (8) feet above the ground on any public right of way or any residential property within two hundred (200) yards of the Salvage Yard. Construction materials, such as lumber, brick or stone used for fencing and screening shall be durable and in good condition, securely anchored and fastened to protect it from damage sustained by wind. Use of old metals, poor quality building materials, and materials such as wood boxes, crates or pallets, and used tires is prohibited, unless previously approved by the LCBO or the Code Compliance Officer. Building Permits are required for fences 6 feet or more in height.
- 5.1.4 Any unlicensed salvage yard existing on any site in Luna County on the effective date of this Ordinance shall discontinue all operation on the effective date of this Ordinance. All salvage materials and any and all items intended for salvage, and all equipment and machinery associated with the salvage operation shall be removed from the site to either a licensed salvage yard or to a location outside of Luna County. The site shall be left in a clean and tidy condition to the satisfaction of the Luna County Code Compliance Officer. Failure to comply may result in the County invoking abatement measures as set out in Article 10 of this Ordinance. Any owner of such site that does not comply with this Section shall be subject to the penalties set out in Article 10 of this Ordinance.
- 5.1.5 Any persons in Luna County engaged in agricultural operations shall be permitted to maintain agricultural equipment salvage materials on their property for parts, repair and replacement purposes.
- 5.1.6 Any person, property owner, or property occupant that commits or knowingly allows the commission of any act in violation of this Article 5 of this Ordinance, shall, upon conviction, be subject to the same penalties as set forth in Article 10 of this Ordinance.

ARTICLE 6 TOWING OPERATIONS

6.1 TOWING OPERATIONS: SCREENING

- 6.1.1 All towing services operating in Luna County shall be legally established and shall abide by the following regulations:
- a) All vehicles, including trailers and mobile homes, towed by a towing service shall be stored in a yard that is adequately screened. For purposes of this section

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“adequately screened” shall have the same meaning as is set out in Article 5.1.3 of this Ordinance.

ARTICLE 7 DEALERS, WRECKERS, DISMANTLERS

7.1 DEALERS, WRECKERS, DISMANTLERS: REGULATIONS

- 7.1.1 All dealers, wreckers, wholesalers and distributors of any vehicle, and title service companies and any towing operation engaged in the business of selling, wrecking, wholesaling or distributing vehicles, shall be legally established, meaning licensed by the Motor Vehicle Division of the Department of Taxation and Revenue as set out in Section 66-4-1, NMSA, 1978.
- 7.1.2 Any dealer, or wrecker, or any towing service engaged in the business of the dealing or the wrecking of vehicles, shall comply with the following regulations and criteria:
- a) An established place of business must be maintained. An established place of business shall be as defined in the State Motor Vehicle Code and for purposes of this Ordinance shall mean a place:
 - i. devoted exclusively to the business for which the dealer or wrecker is licensed and the business incidental thereto;
 - ii. identified by a prominently displayed sign giving the dealer’s or wrecker’s trade name used by the business;
 - iii. of sufficient size or space to permit the display of one or more vehicles or to permit the parking or storing of vehicles to be dismantled or wrecked;
 - iv. on which there is located an enclosed building on a permanent foundation, which building meets the building requirements of Luna County, and is large enough to accommodate the office or offices of the dealer or the wrecker and large enough to provide a safe place to keep the books and records of the dealer or wrecker;
 - v. where the principal portion of the business of the dealer or wrecker is conducted and where the books and records of the business are kept and maintained; and,
 - vi. where vehicle sales are of new vehicles only, such as a department store or a franchise of a department store, as long as the department store or franchise keeps the books and records of its vehicle business in a general office location at its place of business. As used in this section, “department store” means a business that offers a variety of merchandise other than vehicles, and sales of the merchandise other than vehicles constitutes at least eighty percent of the gross sales of the business.
- 7.1.3 Any title service company must maintain a physical place of business accessible to the public. Each such place of business shall be open to inspection by a law enforcement officer or the Department of Taxation and Revenue during reasonable business hours.

ARTICLE 8 BURIAL AND DISPOSAL OF HUMAN REMAINS

8.1 APPLICATIONS

- 8.1.1 Article 8 applies only to the burial or disposal of human remains outside of formally designated cemeteries, either public or private.

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8.2 UNLAWFUL BURIAL

- 8.2.1 In accordance with Section 30-12-14 NMSA, 1978, no person shall use any land or lands as a burial place or a place of interment within fifty (50) yards from either side of the bank or border of any stream, river or any body of water. Anyone who does not comply with this section is guilty of a misdemeanor.
- 8.2.2 No person shall use any land or lands as a place of burial or a place of interment within one hundred (100) yards of any County or State road, right-of-way, easement, or other public way, unless such use preceded the effective date of this Ordinance.

8.3 REGULATIONS

- 8.3.1 Any person using any land or lands as a place of burial for human remains anywhere in Luna County outside of a designated cemetery, either public or private, shall comply with the following regulations;
- a) Prior to interment of any human remains, a member of the family or other duly authorized person such as the executor of the estate or an attorney representing the deceased (the applicant), shall file with the County Planner a copy of the Warranty Deed showing proof of ownership of the land where interment is to take place and a copy of a survey plat, prepared by a land surveyor, licensed in the State of New Mexico, showing the location of the grave or place of burial.
 - b) The survey plat shall:
 - i. show a measured tie between the grave and a registered survey monument;
 - ii. show the location of any stream, river, creek or other body of water within fifty (50) yards of the burial site;
 - iii. show the location of any private roads or easements, or any County or State road, right-of-way, easement or other public way, and any structure or well or septic system within two hundred yards of the proposed burial site;
 - iv. shall indicate the means of access to the burial site, and whether such access is vehicular or pedestrian.
 - v. indicate if, and how, the grave site is to be marked.
- 8.3.2 Provided that the information provided in Article 8.3.1 of this Ordinance indicates that there is no breach of Articles 8.2.1 or 8.2.2 of this ordinance, and the information required by Article 8.3.1 of this Ordinance is satisfactory, the County Planner shall issue an affidavit to the applicant authorizing the requested burial site.
- 8.3.3 Upon receipt of the affidavit from the County Planner, the applicant shall record the plat showing the burial site and the Planner's affidavit in the Office of the County Clerk, where it will be maintained in a separate index for burial plots.

ARTICLE 9 WASTE TIRES, BALED AND NON-BALED: STORAGE AND USE

9.1 GENERAL PROHIBITION

- 9.1.1 Except for agricultural uses, a person shall not store or use for any purpose on any site or lot in Luna County waste or scrap tires, baled or non-baled, nor any processed tires, nor any used tires, without the owner of such site or lot, or his/her authorized agent, obtaining a valid permit for such storage or use from Luna County. Any use proposed shall be a beneficial use and whether such proposed use is judged to be beneficial shall be in the sole discretion of Luna County. Excluded from this requirement are: a retail business premise where new and used tires are normally sold; and a business where a tire

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retreading business is carried on provided no more than five hundred (500) waste or scrap tires are kept on the business premises at any one time.

9.1.2 No person shall engage in the open burning of scrap tires.

9.1.3 A person shall not engage in, maintain or allow illegal dumping of used, waste or scrap tires.

ARTICLE 10 ADMINISTRATION AND ENFORCEMENT

10.1 It is unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance.

10.2 Administration & Enforcement Responsibility

10.2.1 The Code Compliance Officer of Luna County, the Luna County Sheriff, and any other official designated by the Luna County Board of County Commissioners, or the Luna County Manager, shall be responsible for the Administration and Enforcement of this Ordinance and any other Code or Ordinance directed by the appropriate Luna County authority.

10.3 Inspectors

10.3.1 Any Building Inspector of the Luna County Planning Office, and the Luna County Fire Marshall, and any Electrical Inspector of the State of New Mexico, and any Plumbing Inspector of the State of New Mexico, and any Environmentalist of the State of New Mexico Environment Department, and any Manufactured Housing Division Inspector of the State of New Mexico, and any Engineer or Technician or Technologist or Water Resource Specialist of the State Engineer's Office of the State of New Mexico, and any other qualified person, may be authorized by the Code Compliance Officer to help enforce the standards set out in this Ordinance, or may be requested by the Code Compliance Officer to give a written report, or other advice to aid in the administration and enforcement of this Ordinance.

10.4 Notice of Nuisance-Notice of Violation

10.4.1 Any condition or situation which violates any of the provisions of this Ordinance shall be deemed a Nuisance, both public and private in nature.

10.4.2 In addition to the criminal penalties provided for in this Ordinance, any such nuisance, after reasonable efforts to secure voluntary compliance with this Ordinance have failed, shall be subject to abatement as follows:

- a) Notice of Nuisance. (i) If, after inspection, as the result of a complaint by a member of the public, or the observation of any County or State employee, the Officer is satisfied that a nuisance does exist, the Officer shall serve, or cause to be served by personal service, or send by prepaid registered mail to the owner of record of the property, or to the occupant or tenant of the property, or both, and to all persons shown by the records to have an interest in the property, a Notice of Nuisance or Violation setting out the particulars of the violation(s). The Notice shall establish that the abatement of the violation(s) by the owner, or occupant or tenant, or both, shall begin in not more than ten (10) days and shall be completed in not more than ninety (90) days after service of the Notice. The Notice shall be served at the owner's or occupant's or tenant's last known address; (ii) In the event a violation of this ordinance constitutes an immediate

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danger to the public health and safety, the notice provisions of this subsection shall not apply, and the violation may be prosecuted and abated immediately.

- b) Placard. If the Officer is unable to achieve service under Article 10.4.2 a) he/she may place a placard containing the terms of the Notice in a conspicuous place on the property or building, and the placing of the placard shall be deemed to be sufficient service of the Notice on the Owner or other persons.
- c) Extension of Time Frame for Abatement. Where the Officer is satisfied that there is good and sufficient reason to extend the time frame for abatement of the violation(s), he/she may extend the time frame set out in Article 10.4.2 a) above for a period of time not to exceed forty-five (45) days beyond the time period set out in the original Notice.
- d) Failure to Abate. In the event the owner, occupant or tenant of the property where the nuisance violation exists, has failed to abate the nuisance violation(s) within the prescribed period of time, then the Officer shall issue a citation or file a complaint charging violation of this Ordinance with the Magistrate Court, or other appropriate court of jurisdiction, demanding that the owner of the property, or the occupant, or both, be held to answer to the Court for the violation.
- e) Removal of Nuisance. In the event that the person is convicted of violating this Ordinance and continues to refuse to abate the violations, the County or aggrieved property owner may enforce this Section in any manner consistent with law.
- f) 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 attorneys fees shall be elements of damage in any proceeding.

10.5 Removal of Dangerous Buildings or Debris

- a) In addition to the provisions of Article 10.4.2 above, whenever any building or structure, except for an agricultural building which is currently used for the purpose of storage of agricultural equipment, supplies, tools or parts, is ruined, damaged and dilapidated, or any property is covered with ruins, rubbish, refuse, wreckage or debris, the Board of County Commissioners (the County Commission) may by resolution find that the ruined, damaged, dilapidated building, structure or property is a menace to the public health, safety, peace or comfort and require the removal of the building, structure, ruins, rubbish, refuse wreckage or debris. "Covered", for purposes of this Section, shall mean any part of the subject property.
- b) A copy of the resolution shall be served on the owner, occupant or agent in charge of the building, structure or property. If the owner, as shown by the real estate records of the County Clerk, occupant or agent in charge of the building, structure or property cannot be served within the county, a copy of the resolution shall be posted on the building, structure or property and a copy of the resolution shall be published one time.
- c) Within ten (10) days of the receipt of a copy of the resolution or of the posting and the publishing of a copy of the resolution, the owner, occupant or agent in charge of the building, structure or property shall commence removing the building, structure, ruin, rubbish, refuse, wreckage, or debris, or file a written objection with the County Manager asking for a hearing before the County Commission.

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- d) If a written objection is filed as required by this section, the County Commission shall:
 - i. fix a date for a hearing on its resolution and the objection;
 - ii. consider all evidence for and against the removal resolution at the hearing; and
 - iii. determine if its resolution should be enforced or rescinded.
- e) Any person aggrieved by the determination of the County Commission may appeal to the district court by:
 - i. giving notice of appeal to the County Commission within five (5) days after the determination made by the County Commission; and,
 - ii. filing a petition in district court within twenty (20) days after the determination by the County Commission. The district court shall hear the matter de novo and enter judgment in accordance with its findings.
- f) If the owner, occupant or agent in charge of the building, structure or property fails to commence removing the building, structure, ruins, rubbish, refuse, wreckage or debris:
 - i. within ten (10) days of being served a copy of the resolution or of the posting and the publishing of the resolution; or,
 - ii. within five (5) days of the determination by the governing body that the resolution shall be enforced; or,
 - iii. after the district court enters a judgment sustaining the determination of the County Commission, the County may remove the building, structure, ruins, rubbish, refuse, wreckage or debris at the cost and expense of the owner. The reasonable cost of the removal shall constitute a lien against the building, structure, ruins, rubbish, refuse, wreckage or debris so removed and against the lot or parcel of land from which it was removed. The lien shall be foreclosed in the manner provided in Sections 3-36-1 through 3-36-6, NMSA 1978.
- g) The County may pay for the costs of removal of any condemned building, structure, ruins, rubbish, refuse, wreckage or debris by granting to the person removing such materials, the legal right to all salvageable materials in lieu of all other compensation.
- h) Any person or firm removing any condemned building, structure, ruins, rubbish, refuse, wreckage or debris shall leave the property from which the material has been removed in a clean, level and safe condition for further occupancy or construction and with all excavations filled.

10.6 Emergency Measures

- 10.6.1 For purposes of this section, "emergency" or "imminent danger" shall mean any condition which could cause serious or life-threatening injury or death at any time.
- 10.6.2 Imminent Danger. Where, in the opinion of the Building Official, or the Code Compliance Officer, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials,

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or operation of defective or dangerous equipment, the Building Official or the Code Compliance Officer, with the approval of the County Planning Director, or the County Manager, is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The County Planning Director, or the Building Official or the Code Compliance Officer shall cause to be posted at entrance to such structure a notice reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the Luna County Code Compliance Officer (or the Building Official)." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the structure. In determining the nature and extent of the imminent danger, the Building Official or the Code Compliance Officer, with the approval of the County Planning Director or the County Manager, may engage the services of a professional engineer licensed in the State of New Mexico, or other knowledgeable professional.

- 10.6.3 Temporary Safeguards. Whenever, in the opinion of the Code Compliance Officer or the Building Official, there is imminent danger due to an unsafe condition, the Code Compliance Officer, with the approval of the County Planning Director or the County Manager, may order the boarding up of openings, to render such structure temporarily safe or take such other action as the Code Compliance Officer or the Building Official deems necessary to meet such emergency.
- 10.6.4 Closing Streets. When necessary for public safety, the Code Compliance Officer or the Building Official with the approval of the County Planning Director or the County Manager, shall temporarily close structures and/or order the authority having jurisdiction to close, sidewalks, streets, roads, public ways and places adjacent to unsafe structures and prohibit the same from being utilized.
- 10.6.5 Emergency Repairs. For the purposes of administering and enforcing Article 10.5, of this Ordinance, the Code Compliance Officer, with the approval of the County Planning Director or the County Manager, may employ the necessary labor and materials to perform the required emergency work as expeditiously as possible.
- 10.6.6 Costs of Emergency Repairs. Costs incurred in the performance of emergency work shall be paid by the County. The County Attorney shall institute all appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

10.7 Certificate of Compliance

- 10.7.1 Following the inspection of a property and/or building, the Officer may, or on request of the owner, or his/her authorized agent shall, issue a certificate of compliance, if, in his/her opinion, the property and/or building is in compliance with the standards of this Ordinance.
- 10.7.2 When pertaining to this Ordinance, a fee shall be paid to the County prior to the issuance of a Certificate of Compliance where it is issued at the request of the owner or his/her authorized agent in an amount prescribed by the County Board of Commissioners, which amount shall be not less than \$100.00.

10.8 Prohibition

- 10.8.1 The Code Compliance Officer may issue a Notice prohibiting the occupancy of any unsafe or uninhabitable building.

10.9 Citation Uniform Non-Traffic

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10.9.1 The use of uniform non-traffic citation forms is authorized for use in enforcement of this Ordinance, except as otherwise provided.

10.10 PENALTIES AND REMEDIES

Any person violating or failing, or refusing to comply with the provisions of this Ordinance and the Codes adopted may be prosecuted in any court of competent jurisdiction within the County, and shall be punished by (1) a fine of not more than three hundred dollars (\$300), (2) a fine of not more than one thousand dollars (\$1,000) for discarding or disposing of refuse, litter or garbage on public or private property in any manner other than by disposing it in an authorized landfill; (3) a fine of not more than five thousand dollars (\$5,000) for the improper or illegal disposal of hazardous materials or waste in any manner other than as provided for in the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978]; and in accordance with Section 4-37-3 NMSA 1978. The Board of County Commissioners may apply to the District Court for appropriate injunctive relief to compel compliance by any person whose conduct violates any provision of this Ordinance. The County shall be entitled to recover a reasonable attorney's fee if required to enforce this Ordinance through the issuance of a demand letter, or in enforcing any portion of this Ordinance in any Court of competent jurisdiction. After the effective date of this ordinance, all violations are subject to issuance of a citation.

ARTICLE 11 SEVERABILITY

If any article, section, subsection, paragraph, sentence, clause, phrase, provision, standard or any portion thereof 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 County Commissioners to pass such article, section, subsection, paragraph, sentence, clause, phrase, provision, standard, and every part thereof separately and independently from every other part.

ARTICLE 12 EFFECTIVE DATE AND REPEAL

This Ordinance shall be recorded and authorized by the County Clerk following adoption by the Board of County Commissioners. The effective date of this Ordinance shall be thirty (30) days after the Ordinance has been recorded.

Adoption of this Ordinance hereby repeals the following provisions of Luna County Ordinance No. 37, Second Revision: Article 4, Section 4.7; Article 4, Section 4.9; Article 4, Section 4.11; Article 6, Section 6.1; Article 6, Section 6.2; Article 6, Section 6.3, Sub-Section 6.3.1; Article 6, Section 6.3, Sub-Section 6.3.2; Article 6, Section 6.3, Sub-section 6.3.4; Article 6, Section 6.3, Sub-section 6.3.5; Article 6, Section 6.3, Sub-section 6.3.7; Article 6, Section 6.3, Sub-section 6.3.8; Article 6, Section 6.4; Article 6, Section 6.7; Article 6, Section 6.8, Sub-section 6.8.4; Article 6, Section 6.8, Sub-section 6.8.5; Article 6 Section 6.8, Sub-section 6.8.6; Article 6, Section 6.8, Sub-section 6.8.7; Article 12; Article 13; Article 14; Article 15; Article 16, Section 16.1.

PASSED, APPROVED AND ADOPTED this 8th day of April, 2010,

Board of County Commissioners,
Luna County, New Mexico.

By: 

R. Javier Diaz, Chairman

ATTEST:



Karen Smyer, Luna County Clerk



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