

SAN MIGUEL COUNTY, NEW MEXICO

ORDINANCE NO. SMC – 11-10-20

AN ORDINANCE PROVIDING FOR THE EFFICIENT AND SANITARY DISPOSAL AND COLLECTION OF SOLID WASTE IN SAN MIGUEL COUNTY, NEW MEXICO, REGULATING SOLID WASTE, LITTER AND CONSTRUCTION & DEMOLITION DEBRIS; ESTABLISHING A SOLID WASTE MANAGEMENT FEE AND PROVIDING A PENALTY, SEVERABILITY, AND EFFECTIVE DATE.

WHEREAS, the San Miguel County Board of Commissioners finds that it's necessary to provide for the efficient and sanitary collection, recycling, transportation, disposal of solid waste and construction and demolition debris, and the control of litter in San Miguel County; and

WHEREAS, the San Miguel County Board of Commissioners commits to the safety, the health, the prosperity, and improve the morals, order, comfort, and convenience of the county and its citizens; and

WHEREAS, the San Miguel County Board of Commissioners has determined that it is necessary to adopt the powers enumerated in Section 11-1-1 et seq. NMSA 198 (Repl. Pamphlet 1983) for the storage, recycling, collection and disposal of solid waste; and

WHEREAS, the San Miguel County Board of Commissioners finds that it's necessary to provide a coordinated county-wide program for the management of solid waste and construction and demolition debris in cooperation with Federal and State Agencies; and

WHEREAS, that it's necessary that a solid waste management program be implemented in order to protect the environment; provide for the safety, and health, promote prosperity and improve the morals, order, comfort, and convenience of the county its citizens; and

WHEREAS, the San Miguel County Board of Commissioners finds that a system of solid waste collection is necessary in order to protect the landscape of San Miguel County from illegal dumping occasioned by the lack of a countywide system of reuse collection containers, and to protect the environment and promote the preservation of the natural beauty of San Miguel County said fee; and

NOW, THEREFORE BE IT ORDAINED by San Miguel County of Board of Commissioners as follows:

SECTION 1: SHORT TITLE

This Ordinance shall be known as the SOLID WASTE MANAGEMENT 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; the authority provided in Section 4-56-1 through 4-56-3 NMSA 1978 which authorizes the county to establish and maintain, manage and supervise a system of storage, collection and disposal of all refuse; and the authority provided in Sections 3-36-1 through 3-36-7 NMSA 1978 which enables the County to attach liens for unpaid charges established by ordinance.

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. Where the provisions of the Ordinance conflict with other rules, regulations, agreements or other County Ordinances or resolutions, the provisions of this Ordinance shall be controlling. Where this Ordinance imposed greater restrictions than those imposed by other rules, regulations, agreements or other County Ordinance or resolutions, the provisions of the Ordinance shall be controlling.

SECTION 4: DEFINITIONS

- A. Word Construction – Words used in the present tense include the future; words in the masculine include the feminine; and words in the singular include the plural.

- B. Definitions – the following definitions apply to this Ordinance.
 - 1. “Clean Fill” is broken concrete, brick, rock, stone, glass, reclaimed asphalt pavement, or uncontaminated soil generated from construction and demolition activities. Reinforcement materials which are an integral part, such as rebar, are included. Clean fill must be free of other solid waste or hazardous waste.

 - 2. “Code Enforcement Officer” is the person appointed by the County Commission upon recommendation of the Sheriff’s office to enforce all portions of this Ordinance that involve illegal violations of this ordinance and to enforce citations and criminal liability.

 - 3. “Construction and Demolition (C&D) Debris” is material generally considered to be water insoluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing materials, pipe, gypsum wallboard, and lumber from the construction or destruction of a structure project and includes rocks, soil, tree remains, trees and other vegetative matter that normally results from land clearing. If construction and demolition debris is mixed with any other types of solid waste, it loses its classification as construction and demolition debris. Construction and demolition debris does not include asbestos or liquids including, but not limited to, waste paints, solvents, sealers, adhesives, or potentially hazardous materials.

 - 4. “Container” is a container designed to accept solid waste to be transported to an authorized disposal site.

 - 5. “Container Site” is an unsupervised location available for disposal of solid waste for residential customers.

 - 6. “Convenience Center” means a registered solid waste facility staffed with a convenience center attendant for the purpose of operating and maintaining for the storage, disposal, collection, separation and transport of solid waste and recyclables.

 - 7. “County Commission” is the San Miguel County Board of Commissioners, the duly constituted governing body of San Miguel County.

 - 8. “County Manager” is the chief administrative assistant to the San Miguel County Board of Commissioners.

9. "Debris" is all waste building materials, bricks, concrete blocks, shingles, roofing materials, lumber, metal or plastic piping, commercial construction wastes and other matter that is commonly known as debris.
10. "Garbage" is all waste foods, swill, carrion, slops and all waste from the preparation, cooking and consumption of food and from handling, storage and sale of food products and carcasses of animals.
11. "Green Waste" means landscape trimmings, including limbs and branches of 1 inch in diameter or greater. Does not include brush or tree stumps.
12. "Hazardous Waste" includes material listed in the Code of Federal Regulations, 40 CFR 261 classified as Toxic, Reactive, Ignitable, or Corrosive.
13. "Litter" is solid waste or debris found in public areas or generated while traveling in a motor vehicle.
14. "Owner" is the property owner, whether residing on said property or not, the property being located within San Miguel County and outside the corporate boundaries of the municipalities of the City of Las Vegas and the Village of Pecos.
15. "Person" is 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.
16. "Premises" is defined as a structure, whether designed for residential or commercial use, located on any property within San Miguel County and outside the corporate limits of the municipalities of the City of Las Vegas and Village of Pecos.
17. "Commercial Hauler" is any person transporting solid waste for hire by whatever means for the purpose of transferring, processing, storing or disposing of the solid waste in a solid waste facility, except that the term does not include an individual transporting solid waste generated on his residential or commercial premises for the purpose of disposing of in a solid waste facility.
18. "Refuse" is all junked parts or bodies of automobiles, tires, waste paper, paper cartons, cardboard, trees, tree branches, yard trimmings or clippings, leaves, pine needles, wood, glass, plastic, discarded furniture or appliances, tin cans, bottles, dirt, ashes, and all other unwholesome material of every kind, not including garbage or debris.
19. "Residential" is any habitable dwelling or each single unit of multi-unit habitable dwellings.
20. "Responsible Party" is defined as the owner of any premises, whether vacant, improved or unimproved, used for either a residential or business purpose; who is responsible for payment of the mandatory fee or fees as outlined in this ordinance.
21. "Solid Waste" is any garbage, refuse, debris, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial,

commercial, mining, and agricultural operations and from community activities. “Solid Waste” does not include”

- a) Waste from the extraction, beneficiation and processing of ores and waste materials, 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, manures 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-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. section 2011 et seq.;
 - 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.
17. “Solid Waste Facility” means any public or private system, facility, location, improvement on the land, structures or other appurtenances or methods used for processing, transformation, recycling, or disposal of solid waste, including landfill disposal facilities, transfer stations, convenience centers, resource recovery facilities, and incinerators, or any facility that processes, recycles, transform, transfers, or otherwise handles low level or high level radioactive waste or transuranic wastes, and other facilities not specified. A “Solid Waste Facility” does not include a residential “backyard” composting pile that composts organic solid waste entreated on-site or any facility or person accepting, stockpiling, or using clean fill material as long as:
- a) the clean fill material does not create a public nuisance or adversely affect the environment;
 - b) the material is not placed in a watercourse or in any other manner inconsistent with the Water Quality Control Commission regulation 2-201 “Disposal of Refuse.”

SECTION 5: ACCUMULATION OF SOLID WASTE, LITTER, AND C&D DEBRIS; REMOVAL; PENALTY

- A. No person shall permit to accumulate any solid waste on property owned, leased or occupied by that person within two hundred (200’) feet of another occupied premises, except in covered water-tight containers made of metal or plastic.
- B. No person shall throw, place, jump, or dispose of any solid waste, litter, or C&D debris on any road, street, gutter, sidewalk, or alley, or on any public property or another’s private property which is described explicitly as “illegal dumping”.

- C. No person (whether owner, tenant, lessee, manager or other person) shall permit any solid waste, litter, or C&D debris or any composition or residue thereof which is in an unsanitary condition or hazardous to public health to remain upon the property.
- D. No person shall cast, place, sweep or deposit any solid waste, litter, or C&D debris 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 or private property within the County.
- E. An accumulation of solid waste, litter, or C&D debris in violation of the terms of this Ordinance is hereby declared to be a nuisance and is unlawful.
- F. Subject to any limitations or otherwise provided by law, the Sheriff or his designated Code Enforcement Officer is authorized, upon issuance of a warrant, to inspect and enter any property where he has reasonable cause to suspect that unlawful accumulations of solid waste, refuse, litter, or C&D debris may exist.
 - 1) If, upon the basis of such inspection or investigation, the Sheriff finds that a violation of Subsections A-E of this Section exists, he shall notify in writing the owner or any other person with an interest in or control of the property (whether, tenant, lessee, manager or other person) to correct such violation within a designated period of time, from ten (10) days up to thirty (30) days from the date of delivery of the notice.
 - 2) Upon the failure, neglect or refusal of any person, owner, tenant, lessee, manager or occupant to properly correct any such violations within the time prescribed or within five (5) days of the return of such prescribed notice as undeliverable if the notice is served by mail, the County Commission 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) If the Sheriff finds that the unlawful accumulation of solid waste, litter, or C&D debris presents a clear and present danger to the public health, safety and welfare, 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 an unlawful accumulation of solid waste, litter, or C&D debris shall be determined on the basis of man-hours work, equipment utilized in the clean-up at a customary rental rate per day plus any direct costs paid by the County to current the violation. The cost of correction shall be a lien upon the property and shall remain in full force and effect for the amount due plus other costs and attorney fees.
- I. The County Manager or her/his designee shall maintain files for the inspections, notices and actions taken pursuant to this Section. Costs incurred by the County in undertaking corrective actions shall be documented. The files shall be considered public records.
- J. Nothing in this Section shall be construed to require any notice to the owner or occupant, or otherwise, before filing of a civil or criminal action for the violation or enforcement of any provision of this Ordinance.

SECTION 6

SOLID WASTE, LITTER AND C&D DEBRIS PRE-COLLECTION PRACTICES

- A. Solid waste and recyclables are to be properly stored on the premises where they are generated, or shall be placed and maintained in County container at a San Miguel County convenience center or other solid waste disposal facility(ies) franchised, licensed and/or permitted in conformance with applicable state and federal law, state regulations, and this Ordinance.
- B. Solid waste transported for disposal at a San Miguel County convenience centers or container sites shall be secured in garbage bags, with tarps, or straps as necessary to prevent fugitive waste.
- C. Solid waste shall be deposited at convenience centers or container sites in a manner that the County can maximize the volume of the container provided for the storage, transportation and disposal of solid waste.
- D. Prohibited materials shall not be deposited in County solid waste containers occupying convenience centers or container sites but shall be disposed of in accordance with applicable local, state and federal ordinances and or rules/regulations at the expense of the person generating the waste.
- E. Wood ash which has not cooled, or which may otherwise be capable of rekindling or igniting a fire if brought in contact with combustible materials may not be disposed at San Miguel County convenience centers or container sites.
- F. An owner may request a waiver of the solid waste collection fee if the landowner has at least three-hundred (300) contiguous acres of land with adequate disposal site per household, obtains a permit from the New Mexico Environment Department, agrees to comply with all other provisions of the New Mexico Solid Waste Rules as to disposal, and if the solid waste is generated on that property does not harm the environment or endanger the public health, welfare or safety.

SECTION 7:

SOLID WASTE CONTAINERS

- A. Commercial haulers are expressly prohibited from using County solid waste containers for the disposal of solid waste and C&D debris unless specified through a contractual agreement.
- B. Any person using a County solid waste container shall comply with the rules and regulations established by the County Commission 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.
- C. Any solid waste, litter of C&D debris deposited in the County solid waste containers shall be reduced in size to no more than four (4') feet in length.
- D. If the County solid waste container is full, solid waste shall not be placed on the ground or in proximity of the containers to constitute a litter or health hazard or become blown and scattered.

- E. No person shall impede access to a County solid waste container other than when necessary to remove and deposit solid waste.

SECTION 8: **DAMAGE TO SOLID WASTE CONTAINERS**

- A. No person(s), including children, shall be on top of or inside the County solid waste containers.
- B. No person shall intentionally damage any County solid waste container including graffiti or other markings.
- C. Any person who damages a County solid waste container shall be liable to the County for the cost, repair, or replacement such container, in addition to the penalties provided in Section 16 of the Ordinance.

SECTION 9: **HAZARDOUS WASTE AND GREEN WASTE**

- A. Hazardous wastes in greater than household quantities shall not be disposed at San Miguel County convenience centers or County solid waste containers. Such waste shall be disposed of in accordance with any applicable county, state and federal laws or regulations, at the expense of the person accumulating such waste.
- B. Green waste shall only be disposed at designated San Miguel County convenience centers.

SECTION 10: **CONSTRUCTION SITES AND TRANSPORTATION OF MATERIALS**

- A. Any person who has secured a state building permit shall, prior to commencement of any construction activity in the County, furnish or place on that property a container or fenced area of suitable size and design to contain all solid waste, litter, or C&D debris which may be disturbed or removed from the premises or property by the wind or elements.
- B. No person generating solid waste or C&D debris shall allow solid waste or litter of any kind to be blown or be carried by the elements from the premises or property for which the building permit was secured.
- C. Any person engaged in construction or demolition shall remove the solid waste, litter, and C&D debris, including structural parts, from the construction site and contain their elements from scattering in the same manner as set out above. C&D debris or solid waste shall be removed and disposed on within five (5) days of completion to an approved solid waste or C&D debris facility.

SECTION 11 **SCAVENGING PROHIBITED**

- A. The practice of removing, taking, scattering or disturbing solid waste or recyclable materials which have been collected and assembled in containers stored on public property or placed by a roadway, street or curb for authorized collection is "Scavenging" and is prohibited by the San Miguel County Board of Commissioners.

- B. No person shall remove, collect, or disturb solid waste or C&D debris stored in or disposed in a solid waste facility or solid waste container unless authorized by the County or scatter the same upon any public or private property.

SECTION 12 **REGULATIONS ADOPTED**

The laws of the State of New Mexico dealing with solid waste management and all ordinances, rules, and regulations promulgated and published pursuant to those laws for the New Mexico Environment Department or any division thereof, (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 reference and made a part of this Ordinance; provide, however, the penalty provisions herein shall apply to violations prosecuted under this Ordinance.

SECTION 13: **SOLID WASTE MANAGEMENT FEE**

- A. The County Commission shall establish a system of fees, pursuant to resolution of the Board, which is duly introduced before the Board of County Commissioners after the Board has provided notice of the meeting at least twenty (20) days prior to said public meeting at which final action on the resolution to establish a system of fees is to be taken.
- B. The County Commission shall set fees for solid waste management based on the actual or projected cost to collect, transport and recycle or dispose of such solid waste. Unmet actual costs resulting from unpaid fees or certain discounts defined and approved by the County Commission shall be the responsibility of the County Commission.
- C. Payment of the solid waste management fees shall be the obligation of the responsible party for each residential or commercial property located in the unincorporated area of San Miguel County.
- D. If there are multiple residences on a property, the solid waste management fee shall be assessed on each such residence.
- E. The solid waste management fee(s) and any subsequent modification thereof shall be established and adopted through resolution by the County Commission.
- F. Any responsible party owning or possessing a vacant residence may be entitled to a reduction of the solid waste management fee, according to administrative guidelines established and adopted through resolution by the County Commission. Any property owner falsely certifying that a residence is vacant is in violation of the Ordinance, and is subject to penalties set forth in Section 16 A.

SECTION 14: **LIENS**

- A. All fees arising under this Ordinance shall be payable by the responsible party of the residence being served at the time the rate or charge accrues and becomes due. The County of San Miguel shall be entitled to a lien upon the residence and upon the tract or parcel of land being served for failure to pay such fees pursuant to the authority granted under Section 3-36-1 et seq. NMSA 1978, which lien shall be a first and prior lien on the

property coequal with municipal liens pursuant to Section 3-36-2 NMSA 1978, but subject only to the lien if general state and county taxes.

- B. The lien provided for in this section shall be enforced in the manner prescribed in Section 3-36-7 NMSA 1978. In any proceedings where pleadings are required, it shall be sufficient to declare that the general purpose of said lien is for the services supplied for the collection, transportation and disposal of solid waste.
- C. The charges and fees imposed herein are the obligation 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, costs of enforcement, including attorney's fees incurred in filing the lien.

SECTION 15: POWERS OF THE COUNTY

In connection with the operation of a solid waste collection system, the San Miguel County Board of Commissioners may:

- A. Execute contracts on behalf of the County, with any municipality, county, or other unit of government, or any private entity for the collection, transportation and recycling or disposal of solid waste generated in the unincorporated areas of San Miguel County.
- B. Regulate the collection, transportation, and recycling or disposal of solid waste and C&D debris by any person within the unincorporated areas of San Miguel County.
- C. Establish, assess and collect fees directly or through its authorized agent from responsible parties in amounts enough to pay the necessary costs of the collection, transportation and disposal system.
- D. Coordinate the collection, transportation and recycling or disposal of solid waste and C&D debris in consultation with the New Mexico Department of Environment, Solid Waste Bureau.
- E. Develop and/or authorize any commercial hauler possessing an up to date business license issued by San Miguel County and is in compliance with NMAC 20-9.32 for the collection, transportation and recycling or disposal of solid waste generated in the unincorporated areas of San Miguel County, to develop, operating policies and procedures for the implementation of the provisions of this Ordinance specified through a contractual agreement.

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 by disposing of 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**

If any article, section, subsection, paragraph, sentence, clause, phrase, provision or portion of any article, section, subsection, paragraph, sentence, clause, phrase or provision in 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 San Miguel 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 18: **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 _____ day of _____ 20____, by the Board of County Commissioners of San Miguel County, New Mexico.

Board of County Commissioners

Maria L Martinez, Commission Chair

Chris A. Najar, Vice Chair

Harold M. Garcia, Commissioner

Janice C. Varela, Commissioner

Max O. Trujillo, Commissioner

Dr. Vidal Martinez, County Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Dave Romero Jr., San Miguel County Attorney

ATTEST:

Geraldine Gutierrez, County Clerk