

TORRANCE COUNTY ORDINANCE NO. 94-12
(Amended November 20, 2002)

AN ORDINANCE PROVIDING FOR THE EFFICIENT AND SANITARY DISPOSAL AND COLLECTION OF SOLID WASTE IN TORRANCE COUNTY; REGULATING SOLID WASTE, LITTER AND C&D DEBRIS; ESTABLISHING A SOLID WASTE DISPOSAL FEE AND PROVIDING A PENALTY, SEVERABILITY AND EFFECTIVE DATE

WHEREAS, the Torrance County Board of Commissioners finds that it is necessary to provide for the efficient and sanitary collection, recycling, transportation and disposal of solid waste and construction and demolition debris and control of litter in Torrance County, and to protect the health, welfare and safety of the citizens of Torrance County; and

WHEREAS, the Torrance County Board of Commissioners has participated in establishing the Torrance County Solid Waste Authority for the purpose of providing a coordinated countywide program for the collection of solid waste in cooperation with the incorporated municipalities of Moriarty, Estancia, Mountainair, Encino; and Willard, and

WHEREAS, the Torrance County Board of Commissioners has determined that it is necessary to adopt the powers enumerated in Section 11-1-1 et seq. NMSA 1978 (Repl Pamp. 1983) for the storage, recycling, collection and disposal of solid waste, and

WHEREAS, the Torrance County Board of Commissioners finds that it is necessary to provide a coordinated countywide program of management of solid waste and construction and demolition debris in cooperation with Federal and State Agencies, and that it is necessary that a solid waste management program be implemented in order to protect the environment and the health, welfare and safety of the citizens of Torrance County and promote the order, comfort, and convenience of the citizens of the County; and

WHEREAS, the Torrance County Board of Commissioners finds that a system of solid waste collection is necessary in order to protect the environs of Torrance County from illegal dumping occasioned by the lack of a countywide system of refuse collection containers, and to protect the environment and promote the preservation of the natural beauty of Torrance County lands; and

WHEREAS, the Torrance County Board of Commissioners finds it necessary to assess a fee to pay for the solid waste collection and disposal system described herein,

NOW, THEREFORE BE IT ORDAINED by the Torrance County 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 Sections 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.

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 this Ordinance conflict with other rules, regulations, agreements or other County ordinances or resolutions, the provisions of this Ordinance shall be controlling. Where this Ordinance imposes greater restrictions than those imposed by other rules, regulations, agreements or other County ordinances or resolutions, the provisions of this 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 portions of this Ordinance.
 3. “Composting” is the process by which biological decomposition of organic solid waste is carried out under controlled conditions. The process stabilizes the organic fraction into a material which can be easily and safely stored, handled and used in an environmentally acceptable manner.
 4. “Construction and Demolition (C&D) Debris” is material generally considered to be water insoluble and nonhazardous 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.
 5. “County Commission” is the Torrance County Board of Commissioners, the duly constituted governing body of Torrance County.
 6. “County Manager” is the chief administrative assistant to the Torrance County Board of Commissioners.
 7. “Hauler” is any person transporting solid waste by whatever means for the purpose of disposing of the solid waste in a solid waste facility, except that the term does not include an individual transporting solid waste generated on or from his residential premises for the purpose of disposing of it in a solid waste facility;

8. "Litter" is solid waste or debris found in public areas or generated while traveling in a motor vehicle.
9. "Owner" is the property owner, whether residing on said property or not, the property being located within Torrance County and outside the corporate boundaries of the municipalities of Moriarty, Estancia, Mountainair, Encino and Willard.
10. "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.
11. "Premises" is defined as a structure, whether designed for residential or commercial use, located on any property within Torrance County and outside the corporate limits of the municipalities of Moriarty, Estancia, Mountainair, Encino and Willard.
12. "Residence" is any habitable dwelling or each single unit of multi-unit habitable dwellings.
13. "Responsible party" is defined as the owner of any premises.
14. "Solid Waste" is any garbage, refuse, septage, 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.
15. "Solid Waste Facility" means any public or private system, facility, location, improvements 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, transforms, 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 generated 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, dump, 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.
- 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. Any 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, the Sheriff finds that a violation of Subsections A-E of this Section exists, he shall notify in writing the person in control of the property (whether owner, 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.
 - 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.
- G. 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 worked, equipment utilized in the clean-up at a customary rental rate per day, plus any direct costs paid by the County to correct 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 shall maintain files of 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 open for public review during normal business hours.

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, shall be placed and maintained in County containers, at a Torrance County Convenience Station, or other refuse and solid waste disposal facility (ies) franchised, licensed and/or permitted in conformance with applicable state law, state regulations, and this Ordinance.
- B. All persons shall dismantle and/or flatten all boxes or packing crates regardless of construction and to bundle all such materials before placing the same in County solid waste containers.
- C. Solid waste deposited in County solid waste containers shall first be sealed in bagged or closed containers.
- D. Toxic and hazardous waste, liquid petroleum, distillates and similar liquid materials shall not be disposed of in County solid waste containers. Disposal of such waste shall be in accordance with Section 9 of this Ordinance.
- 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 shall not be deposited in County solid waste containers.
- F. No garbage, solid waste, or debris shall be burned within the county. Fire permits may be obtained from the county fire marshal's office for certain types of yard refuse.

SECTION 7: SOLID WASTE CONTAINERS

- A. Haulers are expressly prohibited from using County solid waste containers for the disposal of solid waste and C&D debris.
- B. The owner of every mobile home park shall provide for the collection of not less than .5 cubic yards of solid waste weekly per mobile home space. If the County Manager determines that additional containers are necessary, he may order such additional containers as may be required to prevent the accumulation of solid waste or litter.
- C. The owner of every multi-family residential development consisting of five (5) or more units shall provide for the collection of not less than .5 cubic yards of solid waste weekly per residential unit. If the County Manager determines that additional containers are necessary, he may order such additional containers as may be required to prevent accumulation of solid waste or litter.
- D. Any person using a County solid waste container shall comply with the rules and regulations established from time to time 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.
- E. Any solid waste, litter or C&D debris deposited in the County solid waste containers shall be reduced in size to no more than four (4') feet in length.
- F. In the event that the County solid waste container is full, solid waste shall not be placed on the ground or in proximity to the containers so as to constitute a litter or health hazard or become blown and scattered.

- G. 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, including children, shall be on or in the County solid waste containers.
- B. No person shall intentionally damage any County solid waste container.
- C. Any person who damages a County solid waste container shall be liable to the County for the cost, repair, or replacement of such container, in addition to the penalties provided in Section 16 of this Ordinance.

SECTION 9: TOXIC, CORROSIVE, IGNITABLE, FLAMMABLE, EXPLOSIVE OR OTHER PROHIBITED SOLID WASTE

- A. No poisons, acids, caustics, chemicals, waste contaminated by infectious diseases, radioactive waste, dead animals, live pests, rocks, sand, dirt, C&D debris, toxic, highly flammable or explosive materials shall be placed in 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. No yard waste, including grass and tree clippings, pine needles, leaves and cut weeds shall be placed in County solid waste containers. Such waste shall be disposed on the site on which it is generated or in an approved solid waste facility, or in accordance with any applicable county, state and federal laws or regulations, at the expense of the person accumulating such waste.

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. 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.
- B. No person shall remove any solid waste or C&D debris from a solid waste container and 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 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; provided, however, the penalty provisions herein shall apply to violations prosecuted under this Ordinance.

SECTION 13: SOLID WASTE MANAGEMENT FEE

- A. Payment of the solid waste management fee shall be the obligation of the responsible party for each residence located in the unincorporated area of Torrance County.
- 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.
- C. If there are multiple residences on a property, the solid waste management fee shall be assessed on each such residence.
- D. The solid waste management fee shall be established and adopted through resolution by the County Commission.
- E. Any responsible party, as herein defined, may make application to the Solid Waste Authority, on forms approved by said Authority, for a reduced monthly fee as set out above, and by furnishing to the Authority with said application proof that the responsible party is (1) over the age of 65 years; and qualifies for public assistance; (2) or an individual that qualifies for public assistance according to the standard of need as set forth in Sections 27-2-3 and 27-2-4 NMSA 1978, as they currently exist or may hereafter be amended. Upon approval of the application, the solid waste management fee for any such responsible person shall be 50% (Fifty Per Cent) of the established solid waste management fee.
- F. Any responsible party, as herein defined, who is the owner of more than 160 contiguous acres and who qualifies for the exemption provided in 20 NMAC 9.1 Part 108, may make application to the Solid Waste Authority for exemption from the monthly solid waste management fee set out herein. Exemptions are subject to review by the Authority and the New Mexico Environment Department.
- G. 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 this Ordinance, and is subject to penalties set forth in Section 16.A.
- H. Any responsible party contracting with a private hauler franchised to collect and transport solid waste within the county shall be entitled to a quarterly reduction of the established county solid waste management fee, according to administrative guidelines established and adopted through resolution by the County Commission.

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 Torrance 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 of general state and county taxes.

- B. The lien provided for in this section shall be enforced in the manner prescribed in Sections 3-36-7 NMSA 1978. For purposes of this section, such action shall be taken by the Torrance County Clerk. In any proceedings where pleadings are required, it shall be sufficient to declare generally for the service supplied for the collection, transportation and disposal of solid waste.
- 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 and attorney's fees incurred in the cost of filing the lien.

SECTION 15: POWERS OF THE COUNTY

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

- A. Execute contracts on behalf of the County, with any municipality, county, or other unit of government, including the Torrance County Solid Waste Authority, or any private entity for the collection, transportation and recycling or disposal of solid waste generated in the unincorporated areas of Torrance 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 Torrance County.
- C. Establish, assess and collect fees directly or through its authorized agent from responsible parties in amounts designated herein;
- 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.
- E. Develop, or authorize the Torrance County Solid Waste Authority to develop, operating policies and procedures for the implementation of the provisions of this Ordinance.

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 Torrance 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 20th day of November, 2002, by the Board of County Commissioners of Torrance County, New Mexico.

Bill R. Williams
Chairman

Chester Riley
Member

Doug Johnston
Member

ATTEST:

Linda Jaramillo
County Clerk