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COLFAX COUNTY ORDINANCE NO. 2015-04

AN ORDINANCE PROVIDING FOR THE EFFICIENT AND SANITARY DISPOSAL AND COLLECTION OF SOLID WASTE IN COLFAX COUNTY; REGULATING SOLID WASTE, LITTER, CONSTRUCTION AND DEMOLITION DEBRIS; ESTABLISHING A SOLID WASTE DISPOSAL FEE AND PROVIDING A PENALTY, SEVERABILITY AND EFFECTIVE DATE REPEALING COLFAX COUNTY ORDINANCE 1996-5.

WHEREAS, the Colfax 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 Colfax County, and to protect the health, welfare and safety of the citizens of Colfax County; and

WHEREAS, the Colfax 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 Colfax County and promote the order, comfort, and convenience of the citizens of the County; and

WHEREAS, the Colfax County Board of Commissioners finds that a system of solid waste collection is necessary in order to protect the environs of Colfax 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 Colfax County lands; and

WHEREAS, the Colfax 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 Colfax 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. “Cleanfill” 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 to enforce portions of this Ordinance.
3. “Commercial” is defined as entities operating as a business and not defined as a residence.
4. “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.
5. “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.
6. “County” is defined as Colfax County, New Mexico
7. “County Commission” is the Colfax County Board of Commissioners, the duly constituted governing body of Colfax County.
8. “County Manager” is the chief administrative assistant to the Colfax County Board of Commissioners.
9. “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.
10. “Litter” is solid waste or debris found in public areas or generated while traveling in a motor vehicle.
11. “Owner” is the property owner, whether residing on said property or not, the property being located within Colfax County and outside the corporate boundaries of the municipalities of Colfax.

12. "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.
13. "Premises" is defined as a structure, whether designed for residential or commercial use, located on any property within Colfax County and outside the corporate limits of the municipality of Colfax.
14. "Residence" is any habitable dwelling or each single unit of multi-unit habitable dwellings.
15. "Responsible party" is defined as the owner of any premises, residence or commercial.
16. "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.
17. "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."
18. Yard Refuse is vegetative matter resulting from landscaping, land maintenance, and land cleaning operations to exclude tree branches or tree removal.

SECTION 5:

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

- A. 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.
- B. 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.
- C. 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's office or a 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's office or a designated Code Enforcement Officer 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's office or a designated Code Enforcement Officer 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 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 Colfax County Convenience Station, or other refuse and solid waste disposal facility(ies) franchised, licensed or permitted in conformance with applicable state law, state regulations, and this Ordinance.
- B. All persons shall dismantle or flatten all boxes or packing crates regardless of construction and bundle all such materials before placing the same in County solid waste containers.
- C. 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.

- D. 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.
- E. 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, where applicable.

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, unless receiving prior approval of the County Manager.
- 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 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 through resolution 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, toxic, highly flammable or explosive materials shall be placed in County roadside 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 roadside 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 rules 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 rules, 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 and commercial accounts located in the unincorporated area of Colfax 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 or commercial accounts on a property, the solid waste management fee shall be assessed on each such residence, or commercial account.
- D. The solid waste management fee shall be established and adopted through resolution by the County Commission.
- E. Whenever any residence or commercial account subject to this ordinance is being provided solid waste collection by a municipality or by a registered solid waste hauler and when appropriate documentation can establish that said person will continue to contract for such service, the County commission may issue an exemption for a period of one year to that residence or commercial account for payment of the Solid Waste management Fee for such period.

SECTION 14: LIENS

- A. All fees arising under this Ordinance shall be payable by the responsible party of the property at the time the rate or charge accrues and becomes due. The County of Colfax shall be entitled to a lien upon the residence and upon the tract or parcel of land for failure to pay such fees pursuant to the authority granted under Section 3-36-1 through 3-36-7.
- B. The lien provided for in this section shall be enforced in the manner prescribed under state law. For purposes of this section, such action shall be filed with the Colfax 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 property; regardless of whether occupied by an owner, tenants or others, and the County may file a lien against the property for such charges and penalties.

SECTION 15: POWERS OF THE COUNTY

In connection with the operation of a solid waste collection system, the Colfax 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 Colfax 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 Colfax 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, Solid Waste Bureau.
- E. Develop, or authorize the Colfax County Solid Waste Department 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 or NINETY (90) days in jail or both the fine and imprisonment, except that a person violating the Ordinance shall upon conviction be subject to the following penalties in addition to any other penalty provided by this Ordinance:
 1. No 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, County container, County Convenience Station, or other refuse and solid waste disposal facility(ies) franchised, licensed or permitted in conformance with applicable state law;
 2. No 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).
 3. 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 Colfax 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.

SECTION 19: REPEAL AND REPLACE

Colfax County Ordinance 1996-5 is hereby repealed and replaced with Colfax County Ordinance 2015-04. Adopted in open meeting this 15th day of December, 2015.

PASSED, APPROVED AND ADOPTED this 15th day of December, 2015, by the Board of County Commissioners of Colfax County, New Mexico.

COLFAX COUNTY BOARD OF COMMISSIONERS

William E. Sauble

WILLIAM E. SAUBLE, CHAIRMAN

James L. Newton

JAMES L. NEWTON, VICE-CHAIRMAN

Roy P. Fernandez

ROY P. FERNANDEZ, MEMBER



ATTEST:

Freda L. Baca

FREDA L. BACA, CLERK OF THE BOARD