

STATE OF NEW MEXICO
COUNTY OF LEA
ORDINANCE NO. 84

SOLID WASTE

AN ORDINANCE ESTABLISHING THE COUNTY'S AUTHORITY TO ELIMINATE ILLEGAL DISPOSAL AND ILLEGAL ACCUMULATION OF SOLID WASTE AND INSTITUTE ADMINISTRATIVE PROCEDURES TO EFFECTIVELY MANAGE SOLID WASTE GENERATED IN THE UNINCORPORATED AREAS OF THE COUNTY

BE IT HEREBY ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEA COUNTY:

Section 1. Short Title.

This Ordinance may be cited as the "Lea County Solid Waste Ordinance".

Section 2. Purpose.

The purpose of this ordinance is to preserve and protect the health, safety, and quality of life of the inhabitants of the county and to preserve and improve the environmental quality of the county. This ordinance is intended to eliminate illegal disposal and illegal accumulation of solid waste and institute administrative procedures to effectively manage solid waste generated in the unincorporated areas of the county. This Ordinance establishes and defines the authority of the county, establishes the responsibilities of individuals and businesses.

Section 3. Definitions.

For the purpose of this ordinance the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Ashes. The residue from the burning of wood, coal, coke, or other combustible materials.

Board. The Board of County Commissioners of Lea County, New Mexico.

Clear sight. The required unobstructed view from a vehicle about to enter a road from a driveway, alley or another street, of oncoming traffic, as defined by the American Association of State Highway and Traffic Officials (AASI-ITO), or the New Mexico State Highway and Transportation Department.

Commercial solid waste. All types of solid waste generated by hotels, stores, offices, restaurants, warehouses, multiple--unit dwellings and other non- manufacturing activities, excluding residential, household and industrial wastes.

Commercial solid waste collection. All solid waste collection from business establishments, multiple-family dwellings and any collection in a front-end loader container or dumpster.

Commercial solid waste contractor. Any person transporting solid waste for hire by whatever approved means for the purpose of transfer, processing, storing or disposing of the solid waste in a solid waste facility. The term does not include an individual transporting solid waste generated on or for in one's residential premises for the purpose of disposing of it in a solid waste facility.

Construction and demolition (C&D) debris. Materials generally considered 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, and includes rocks, soil, tree remains, trees and other vegetative matter that normally results from land clearing. If debris is mixed with any other types of solid waste, it loses its classification as C&D 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.

Convenience center. A facility for handling and storage of solid waste which accepts solid waste from the general public.

County. The area within the boundaries of the County of Lea, New Mexico, including privately owned lands or lands owned by the United States or the State of New Mexico, except the areas within the limits of any incorporated municipality.

County Manager. The County Manager or designated representative. Dispose or disposal. Refers to the causing, allowing, or maintaining the abandonment, discharge, deposit, placement, injection, dumping, spilling, or leaking of any solid waste into or on any land or water.

Garbage. Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food.

Hazardous waste. Any garbage, solid waste, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, or other discarded material, including solid, liquid, semisolid or containing gaseous material resulting from industrial, commercial, mining or agricultural operations or from community activities, as regulated under Subtitle C of Resource Conservation and Recovery Act (RCRA), which because of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness, or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Hearing examiner. The County Manager or designee.

Hot waste. Any waste which is on fire or smoldering when delivered to the solid waste facility, placed in a collection container, or set out for collection.

Household waste. Any solid waste, including garbage and trash derived from households, including single and multiple residences, domiciles, campgrounds, picnic grounds and day-use recreation areas.

Industrial solid waste. Solid waste generated by manufacturing or industrial processes that is not hazardous waste regulated under Subtitle C of Resource Conservation and Recovery Act (RCRA). Such waste may include, but is not limited to, waste resulting from the following processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals, plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Infectious waste. A limited class of substances that carry a probable risk of transmitting disease to humans, including but not limited to:

1. Microbiological laboratory wastes, including cultures and stocks of infectious agents from clinical research and industrial laboratories, and disposable culture dishes and devices used to transfer, inoculate and mix cultures;
2. Pathological wastes, including human or animal tissues, organs and body parts removed during surgery, autopsy or biopsy;
3. Disposable equipment, instruments, utensils, and other disposable materials which require special precautions because of contamination by highly contagious diseases;
4. Human blood and blood products, including waste blood, blood serum, and plasma;
5. Used sharps, including used hypodermic needles, syringes, scalpel blades, Pasteur pipettes and broken glass; and
6. Contaminated animal carcasses, body parts and bedding.

Landfill. A solid waste facility, designed and operating in compliance with all federal, state, and local requirements, that receives solid waste for disposal and includes, but is not limited to, surface, impoundment, injection well or waste pile as these terms are defined in 40 CFR (Code of Federal Regulations) 257.2 or subsequent requirements.

1. Municipal landfill means a discrete area of land or an excavation that receives household waste and that is not a land application unit; municipal landfill may also receive other types of RCRA Subtitle D waste such as commercial solid waste, non-hazardous sludge, small quantity generator waste, industrial solid waste, construction and demolition debris and other special wastes as defined in the New Mexico Solid Waste Management Regulations. A municipal landfill may be publicly or privately owned and may be existing, new or a lateral expansion; and
2. Special waste landfill means a landfill which receives solid waste other than household waste; this includes, but is not limited to, commercial wastes or special wastes; a construction and demolition landfill is not a special waste landfill.

Municipality. Any incorporated city, town or village, whether incorporated under general act, special act or special charter.

Open burning. The combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;
2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
3. Control of the emission of the combustion products.

Operator. The person(s) responsible for the overall operation of all or any portion of a solid waste facility.

Owner. The property owner, whether or not residing in said premises.

Person. Any natural person or any firm, partnership, association, corporation, company, or organization of any kind.

Premises. An improved or unimproved structure, designed for private or commercial use.

Processing. Techniques to change the physical, chemical, or biological character or component of solid waste, excluding composting or transformation.

Public place. Any land owned by the community (or open to common use) such as roads, alleys or other public ways and any and all public parks, spaces, grounds and buildings.

Recyclable materials. Materials that would otherwise become solid waste if not recycled and that can be collected, separated or processed and placed in use in the form of raw materials, products or densified solid waste derived fuels.

Recycling. Any process by which recyclable materials are collected, separated or processed and reused or returned to use in the form of raw materials or products.

Refuse. Includes, but is not limited to, all putrescible and non-putrescible solid wastes (except body wastes) such as garbage, rejected or waste food, swill, carrion, ashes, dirt, slop, waste paper, trash, rubbish, waste and road clearings.

Residential collection. Refuse from a single dwelling collected individually and not otherwise classified as commercial collection.

Responsible party. Owner of any premises, whether vacant, improved or unimproved, used primarily for either private, public, residential or business purposes.

Reuse. The return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

Rubbish. Includes but is not limited to all non-putrescible solid wastes (excluding ashes), both combustible and noncombustible, such as paper, cardboard, cans, wood, yard clippings, leaves, dirt, glass, bedding, crockery, and similar materials.

Scavenging. The uncontrolled removal of solid waste from a solid waste facility or container.

Site. A lot or combination of lots held in single ownership and requiring solid waste collection service; if several adjacent lots are owned by a developer at the time of building permit issuance, they will be considered separate sites.

Sludge. Any solid, semisolid, or liquid waste, excluding treated effluent generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control device.

Solid waste. Any garbage, solid waste and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial residential, mining, and agricultural operations and from community activities, but does not include (a) drilling fluids, (b) fly ash waste, (c) waste from the extraction of ores and minerals, (d) agricultural waste, (e) cement kiln dust waste, (f) sand and gravel, (g) solid or dissolved material in domestic sewage, or (h) densified solid waste-derived fuel, (I) any material regulated by Subtitle C or Subtitle I, 42 U.S.C. Section 6901 et seq. of the Federal Resource Conservation and Recovery Act of 1976, except petroleum contaminated soils, (G) substances regulated by the Federal Toxic Substance Control Act, 7 U.S.C. Section 136 et seq., or (k) low-level radioactive waste.

Solid waste facility. A facility that is designed and operating in compliance with all federal, state, tribal and local residents to accept solid waste from the public. Solid waste facilities include convenience centers, transfer stations and landfills.

Special wastes. The following types of solid wastes that have unique handling, transportation, or disposal requirements to ensure protection of the environment and the public health, welfare and safety:

1. Treated formerly characteristic hazardous wastes (TFCH);
2. Packing house and killing plant offal;
3. Asbestos waste;
4. Ash;
5. Infectious waste;
6. Sludge;
7. Industrial solid waste;
8. Spill of a chemical substance or commercial product;
9. Dry chemicals, which, when wetted, become characteristically hazardous; and
10. Petroleum contaminated soils.

Storage. The accumulation of solid waste for the purpose of processing or disposal.

Transfer. The handling and storage of solid waste for reshipment, resale, or disposal, or for waste reduction or resource conservation.

Transfer station. A facility which handles solid waste in large containers or vehicles for transfer to another facility and includes, but is not limited to, a convenience center.

Yard refuse. Vegetative matter resulting from landscaping, land maintenance and land clearing operations.

Section 4. Authority of the County Manager.

Powers delegated to the County Manager may be delegated by the County Manager to other appropriate county employees and contractors as deemed necessary to carry out the requirements of this ordinance.

The County Manager shall establish rules and regulations to carry out the intent and purpose of this ordinance to present to the Board of County Commissioners for approval.

Section 5. Ownership of solid waste.

All solid waste generated within or brought into the county is owned by and is the responsibility of the generator, until such time as the waste is deposited in a landfill or approved solid waste facility, or removed by a licensed private contractor except where state or federal requirements prohibit transfer of ownership. A licensed private contractor registered by NMED, who removes solid waste from a property, shall take ownership of the waste until it is taken to a convenience center, transfer station or landfill. In the event any person's name or other identification is affixed or found on any illegally disposed of solid waste, rubbish or refuse on three or more separate items, such evidence shall constitute ownership of solid waste, rubbish, or refuse.

Section 6. Solid waste collection practices.

Special and hazardous waste.

1. Infectious waste. Wearing apparel, bedding, solid waste or other infectious or contagious material from homes, hospitals nursing homes, or other places where highly infectious or contagious diseases have prevailed shall not be placed in containers for regular collection. The producers of such solid waste shall immediately notify the County Manager who shall provide technical assistance on proper collection and disposal of such material, at the expense of the owner or possessor thereof.
2. Hazardous waste. Hazardous waste shall not be collected, transported, or disposed of unless in full compliance with local, state and federal regulations regarding transportation and disposal. Hazardous waste material shall not be placed in containers for regular collection and disposal. The producers or possessors of such material shall immediately notify the County Manager who shall provide technical assistance on the proper collection and disposal of such material at the expense of the owner or possessor thereof. The county further reserves the right to prohibit the disposal of hazardous waste within the unincorporated areas of Lea County.

Collection by commercial producers.

1. Requirements for vehicles. The commercial producers of solid waste, the owners of premises upon which such solid waste is accumulated, licensed transporters of solid waste, or persons who desire to dispose of waste material which is not included in the definition of solid waste shall do so only in compliance with the provisions of this ordinance. Such collection shall be accomplished through the use of a vehicle with a tightly secured cover. Such vehicles shall be operated to prevent offensive odors escaping therefrom and solid waste from being blown, dropped, or spilled.
2. Disposal. Disposal of solid waste by persons so permitted shall be made at a solid waste facility site. If disposal of solid waste occurs in Lea County, compliance with Lea County ordinances and regulations shall apply.

Use of county convenience centers or transfer stations.

1. Any residential producer of solid waste, to include county residents, may dispose of said solid waste at any county convenience center or transfer station.
2. Fees for use of the convenience center or transfer station will be established by resolution.

Section 7. Prohibited Acts.

Dumping, Accumulating and Scattering of Solid Waste, Rubbish, Refuse

1. Dumping. No person shall discard solid waste, rubbish, or refuse anywhere outdoors within the boundaries of the county except at a time and place approved for collection of that person's solid waste under the terms of this ordinance and regulations authorized by said

sections or other provisions of this Code or ordinances of the county. No person shall place solid waste in the solid waste receptacle of another person, business or institution without written permission.

2. Unauthorized accumulation. It shall be unlawful to allow any solid waste, rubbish, or refuse to collect or accumulate on any lot or other premises within the county. Any such unauthorized accumulation or collection is hereby declared to be a nuisance and is prohibited.
3. Scattering of solid waste, rubbish or refuse. No person shall cast, place, sweep, or deposit anywhere in the county any solid waste, rubbish or refuse in such a manner that it may be carried or deposited by the elements upon any road, sidewalk, parkway, sewer, ditch, arroyo, other public place, vacant lot, or into any other premises within the county.
4. Accumulation of C&D debris. Debris resulting from construction or demolition of structures may be collected within an active construction site if and only if the solid waste is contained in such a manner that it will not be carried or deposited by the elements upon any road, sidewalk, parkway, sewer, ditch, arroyo, other public place, vacant lot, or into any premises within the county.
5. Illegal use of Convenience Centers: No business or institution may use any Lea County convenience center or for any individual to place commercial solid waste, rubbish or refuse in a Lea County convenience center. No person shall place solid waste, rubbish, or refuse on the premises of a Lea County convenience center except during the regular posted operating hours.

Hazardous Accumulations and Conditions Prohibited

Hazardous Accumulations and Conditions. It shall be unlawful for any person or company to allow the following conditions to exist on any premises he owns, rents or occupies.

1. The existence of three (3) or more or any combination of non-operational motor scooters, motorcycles, cars, trucks, buses or other vehicles regulated by the New Mexico Department of Motor Vehicles unless the vehicle owner, property owner, or property lessee can show substantial progress in restoration or repairs to non-operational vehicle in the last 30 days or purchase orders, invoices or estimates for repair work to be done in the next 30 days. Provided, however, that this section shall have no application where:
 - A. A person is engaged in a New Mexico Department of Motor Vehicle licensed vehicle dismantling business and any non-operational vehicles are enclosed by a fence of solid construction of wood, brick, metal, or other similar materials, not less than seven (7) feet in height above the level of the ground and maintained in a sightly, safe and secure condition; or
 - B. Any inoperable vehicles are not visible to the public from any road or street abutting such property, or if visible any non-operational vehicles are enclosed by a fence of solid construction of wood, brick, metal, or other similar materials, not less than seven (7) feet in height above the level of the ground and maintained in a sightly, safe, and secure condition.
 - C. For the purposes of this section, a non- operational vehicle is one in which; the engine or motor, the transmission or transaxle, drive shaft, differential, steering mechanism, axles, wheels, body, doors, windshield, headlights, taillights, or any other part of the vehicle is removed, damaged, wrecked, partially dismantled, or in such a state of disrepair that the vehicle cannot be either moved under its own power, driven, licensed or operated on a public road, street, highway, or any other public thoroughfare.
2. The existence of non-operational refrigerators or freezers or any other type of appliance, furniture, vehicle or other container that has a space large enough for a person of any age to enter into with a door, hatch, lid, or cover of any kind capable of closing or sealing which could prevent the escape of any person, not within a licensed sanitary landfill or a licensed commercial salvage business registered with the State of New Mexico.

3. The existence of piles of rubbish, refuse, household trash, tires, debris, grass, weeds, tree limbs, or any other type of material(s) which are or may be susceptible to infestation by rodents, reptiles, insects, or noxious weeds or any other type of animal or plant that is or can be injurious to people, animals or the environment not within a licensed sanitary landfill or New Mexico Environment Department or other regulatory agency regulated facility.
4. The existence of piles of rubbish, refuse, household trash, tires, debris, grass, weeds, tree limbs, or any other material emitting noxious odors, not within a licensed sanitary landfill or a New Mexico Environment Department or other regulatory agency regulated facility.

Notice of Violation-- Any such person who violates any provisions of this ordinance shall be issued a citation by any environmental technician or law enforcement officer authorized to enforce county ordinances or by any individual authorized by Lea County Board of Commissioners to enforce county ordinances.

Section 8. Penalties.

Penalties for violations of this ordinance shall not exceed a fine of up to five hundred dollars (\$500) for the first offense. For second and subsequent offenses, a fine of up to five hundred dollars (\$500) and imprisonment for up to ninety days or both the fine and imprisonment may be imposed, except that the following fines may be imposed in appropriate circumstances:

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; or
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.

Each day such violation is committed or permitted to continue shall be considered a separate offense and shall be punished as such.

Section 9 Unoccupied, Uninhabitable and Dilapidated Buildings Prohibited.

Whenever any building or structure is ruined, damaged or dilapidated, the County Commission may, by resolution, find that the ruined, damaged or dilapidated structure or premise is a menace to the public comfort, health, peace or safety and require the removal from the county of the building, structure, wreckage or debris.

Removal of Unoccupied, Uninhabitable and Dilapidated Buildings.

1. A copy of the resolution adopted pursuant to this chapter shall be served on the owner, occupant or agent in charge of the building, structure or premise. If the owner, as shown by real estate records of the county clerk, occupant, or agent in charge of the building, structure or premises cannot be served, within the county, a copy of the resolution shall be posted on the building, structure or premises, and a copy shall be published one time in a newspaper of general circulation in Lea County.
2. Within ten (10) days of the receipt or of the posting and publishing of a copy of the resolution adopted pursuant to this chapter, the owner, occupant or agent in charge of the building, structure or premises shall commence removing the building, structure, wreckage or debris or file a written objection with the County Clerk asking for a hearing before the County Commission.

If a written objection is filed, the County Commission shall:

1. Fix a date for a hearing on its resolution and the objection.
2. Consider all evidence for and against the removal resolution at the hearing.
3. Determine if its resolution should be enforced or rescinded.

Any person aggrieved by the determination of the County Commission may appeal to the district court by;

1. Giving notice of appeal to the commission within five (5) days after the determination made by the County Commission; and
2. Filing a petition in the district court within twenty (20) days after the determination made by the County Commission.

The district court shall hear the matter de novo and enter a judgment in accordance with its findings.

If the owner, occupant or agent in charge of the building, structure or premises fails to commence removing the building, wreckage or debris:

1. Within ten (10) days of being served a copy of the resolution adopted in this ordinance or of the posting and publishing of such resolution; or
2. Within five (5) days of the determination by the County Commission that the resolution shall be enforced; or
3. After the district court enters judgment sustaining the determination of the County Commission; the County may remove the building, structure, wreckage or debris at the cost and expense of the owner. The reasonable cost of the removal of such building, structure, wreckage or debris shall constitute a lien 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 of the New Mexico Statutes Annotated 1978 Compilation.
4. The County may pay for the costs of removal of any condemned building, structure, wreckage, rubbish or debris by granting to the person removing such materials, the legal title to all salvageable materials in lieu of all other compensation.
5. Any person or firm removing any condemned building, structure, wreckage, rubbish or debris shall leave the premises from which the material has been removed in a clean, level and safe condition, suitable for further occupancy or construction and with all excavations filled.

Removal of Hazardous Conditions by County.

If a violation of this ordinance is not sufficiently corrected within ten (10) days after conviction of the violation in Magistrate Court and no sooner than ten (10) days after the written notice of intent is given, the Lea County Manager may direct a county agency to remove refuse from real property that constitute a fire hazard. When the County removes such hazardous refuse from real property, it shall charge the expense incurred against the owner of the property benefitted with the cost of removal of the refuse, which shall be a legally enforceable debt in favor of the Board of County Commissioners.

Accumulation for recycling.

Notwithstanding other provisions of this ordinance, any person may accumulate and collect recyclable materials for the purpose of recycling it, provided that any collection point:

1. Conforms to ordinances and regulations;
2. Is not on public right-of-way;
3. Is constructed so that the rubbish is contained at the collection point in compliance with subsection C) above;
4. Is shielded from public view; and
5. Is registered with or permitted by NMED as a recycling facility.

Urgent work. If, in the judgment of a County Magistrate, safety or public health is at risk, or the public interest requires that a site be cleaned rapidly, the County Manager may require the owner to employ sufficient manpower supplied by the owner to clean the site within 24 hours. If the person fails to remedy the violation within the specified time, then the County will require corrective action be started at the site immediately, at the expense of the owner, and charge a lien on the property.

Inspection. The County Manager may make such inspections as are reasonably necessary in the enforcement of this ordinance.

Section 10. Injunctive relief.

The placement of solid waste which causes a nuisance or creates a potential or actual health hazard, shall be deemed, or declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

Section 11. Conflict.

In any case where a provision of this ordinance is found to be in conflict with a provision of any, building, plumbing, fire, safety or health ordinance or code effective in Lea County, the provisions which establishes the higher standard for the promotion and protection of the health and safety of the citizens shall prevail.

Section 12. Severability.

If any section, subsection, clause, phrase or portion of these regulations is, for any reason, held invalid or unconstitutional by any government agency or court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 13. Repealer.

All resolutions and ordinances related to the management of solid waste are hereby repealed and replaced by the adoption of this Ordinance.

Section 14. Effective Date.

This Ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the County Clerk and it shall be in full force and effect 30 days after it has been so recorded in accordance with NMSA 1978, Section 4-37-9, as amended.

PASSED, APPROVED, SIGNED AND ADOPTED this 24th day of April, 2014.

LEA COUNTY BOARD OF COUNTY COMMISSIONERS

Gregory H. Fulfer
Gregory H. Fulfer, Chairman

Ron R. Black
Ron R. Black, Vice Chairman

Michael S. Whitehead
Michael S. Whitehead, Member



Dale G. Dunlap
Dale G. Dunlap, Member

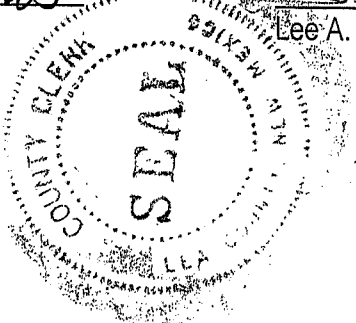
Vacant, Member

ATTEST: Pat Chappelle
Lea County Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: Kelli Williams
Kelli Williams, Deputy

Lee A. Kirksey
Lee A. Kirksey, County Attorney



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STATE OF NEW MEXICO
COUNTY OF LEA
FILED

APR 24 2014

at 3:33 o'clock P M
and recorded in Book _____
Page _____
Pat Chappelle, Lea County Clerk
By Cardinal Deputy

