

MCKINLEY COUNTY
ORDINANCE NO. Sept-98-076

REFUSE, LITTER, HAZARDOUS WASTE, AND WEED CONTROL

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MCKINLEY COUNTY, NEW MEXICO; DEFINING REFUSE, RUBBISH, LITTER, WEEDS, GARBAGE, AND HAZARDOUS WASTE; ESTABLISHING REQUIREMENTS FOR THE DISPOSAL OF REFUSE; PROHIBITING THE THROWING OR DEPOSITING OF LITTER IN THE COUNTY; PRESCRIBING GENERAL CONTROLS AND REGULATIONS CONCERNING LITTER AND THE ACCUMULATION OF WEEDS; ESTABLISHING PENALTIES FOR THE UNLAWFUL DISPOSAL OF REFUSE, LITTER, HAZARDOUS WASTE, AND WEED CONTROL; PROVIDING A SEVERABILITY CLAUSE; DECLARING AN EFFECTIVE DATE; AND REPEALING AND SUPERSEDING ALL PREVIOUS ORDINANCES AND/OR PARTS OF ORDINANCES DEALING WITH THE SAME SUBJECT MATTER.

SECTION I - PURPOSE AND AUTHORITY

- A. This Ordinance shall be known and cited as the McKinley County Refuse, Litter, Hazardous Waste and Weed Control Ordinance.
- B. This Ordinance applies to all residents, businesses, visitors and transients within McKinley County, New Mexico and does not exclude any individual, group, organization, agency, business, visitor, transient or other person not residing within the County which may be in violation or other person not residing within the County.
- C. The Board of County Commissioners has determined, pursuant to § 4-37-1 *et seq.*, and § 4-56-3 (C), N.M.S.A 1978, as amended, that in the interest of the public health, safety and welfare, the disposal of refuse, control of litter, disposal of hazardous waste, and control of weeds should be regulated as provided for in this Ordinance.
- D. The Board of County Commissioners, by participating in the Northwest New Mexico Regional Solid Waste Authority, has provided for the operation of a regional landfill within McKinley County; a solid waste transfer station; solid waste convenience centers; and/or role off collection system.
- E. By this Ordinance, the County Commission is acting to regulate the disposal of refuse, litter and hazardous waste within McKinley County, and the control of noxious weeds.
- F. This Ordinance hereby repeals and supersedes all previous Ordinances and/or parts of Ordinances dealing with the same subject mater.



SECTION II - DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words, and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory. The masculine includes the feminine.

- A. Aircraft - a contrivance now known or hereafter invented, used or designed for navigation or for flight in the air. The word "aircraft" shall include helicopters and lighter-than-air dirigibles and balloons.
- B. Ashes - the residue from burning wood, coal, coke, or other combustible materials.
- C. Authorized Private Receptacle - a litter storage and collection receptacle as required and authorized herein.
- D. County - shall include the area within the boundaries of the County of McKinley, including privately-owned land or land owned by the United States, and land within the boundaries of a Water and Sanitation District, except the area within the limits of the City of Gallup, New Mexico.
- E. County Manager - the County Administrator of McKinley County or a designated representative.
- F. Garbage - putrescible animal and vegetable wastes, resulting from handling, preparation, cooking and consumption of food.
- G. Litter - garbage, refuse, and rubbish, as defined herein, and all other waste material which, if thrown or deposited as herein prohibited, tends to create danger to public health, safety and welfare.
- H. Newspaper - any newspaper of general circulation as defined by general law, any newspaper duly entered with the United States Postal Service in accordance with Federal Statute or regulations, and any newspaper filed and recorded by any recording officer as provided by general law, and, in addition thereto, shall mean and include any periodical or current magazine regularly published with not less than four issues per year and sold to the public.
- I. Park - a park, reservation, playground, beach, recreation center, zoo, golf course, or any other public area in the County owned or used by the County and devoted to active or passive recreation.

- J. **Person** - any person, firm, association, partnership, corporation, company or organization of any kind.
- K. **Private Premises** - any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule, or mailbox belonging or appurtenant to such dwelling, house, building, or other structure.
- L. **Public Place** - any and all streets, sidewalks, boulevards, alleys, or other public ways and any and all public parks, sources, spaces, grounds, or buildings.
- M. **Refuse** - putrescible and non-putrescible solid waste (except body wastes) including, but not limited to garbage, rubbish, ashes, street cleaning, petroleum products, animals, abandoned automobiles and solid market and industrial wastes.
- N. **Rubbish** - non-putrescible solid wastes (excluding ashes) consisting of both noncombustible and combustible wastes, such as paper, cardboard, tin cans, yard clippings, dirt, wood, glass, bedding, crockery, and similar materials. This also includes ruins, wreckage debris, and damaged or dilapidated structures, and junk appliances, air conditioners or the like.
- O. **Vehicle** - every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks. This includes junk vehicles, parts, inoperable vehicles, motor bikes or the like.
- P. **Weeds** - shall mean all rank, noxious, poisonous, harmful, unhealthful, wild, naturally occurring, without cultivation, vegetation or any growth of any kind or nature whatsoever of an offensive or unsightly nature, or which is deleterious to the health, safety and welfare of the public, and shall include but is not limited to the following:
1. Pigweed (*Amaranthus retroflexus*);
 2. Russian Thistle (*Salsola pestifer*);
 3. Ragweeds (*Ambrosia* spp.);
 4. Lambsquarter (*Kenopodium* spp.);
 5. Kochia.
- Q. **Legal Solid Waste Disposal Site** - a location for solid waste disposal which has been approved by the NWNMRSWA and, when required, licensed by the Environment Department of the State of New Mexico.
- R. **Commercial Solid Waste Disposal Site** - a business which charges a fee for disposal of ashes, garbage, refuse, rubbish, litter and all other waste products on its premises.

- S. Sanitary Landfill Standards - those methods referred to in the Solid Waste Management Regulations promulgated by the Environment Department of the State of New Mexico.
- T. Northwest New Mexico Regional Solid Waste Authority (NWNMRSWA) - that organization created by Joint Powers Agreement between Cibola County, McKinley County, City of Gallup, City of Grants, and the Village of Milan. The NWNMRSWA is granted power to enforce this Ordinance, and manage, maintain, and license or register, all solid waste facilities and collection systems within McKinley County and, regulate any solid waste concern in McKinley County.
- U. Hazardous Waste - those wastes listed, identified and declared to be hazardous by the New Mexico Environment Department and those identified and listed under the Federal Resource Conservation and Recovery Act of 1976. Hazardous wastes shall include radioactive materials as defined in §74-4A-1(B), NMSA 1978, as amended. Hazardous wastes shall also include those defined in §74-4A-4(C).

SECTION III - PROHIBITED ACTIVITIES / REFUSE AND RUBBISH

- A. Except as provided herein, no person shall dispose of any refuse or rubbish over any of the streets or alleys of the County, or within the jurisdictional limits of the County. No person shall place any refuse upon any private property (unless owned by such person subject to sub-section "B" of this section) within the County. No person shall throw or deposit any refuse in any depression, ditch, arroyo, stream or other body of water.
1. This Ordinance shall not prohibit the actual producers of refuse or the owners of premises upon which refuse has accumulated from personally collecting, conveying, and disposing of such refuse, provided such producers or owners comply with the provisions of sub-section "B" of this section and with any other applicable regulations, laws or ordinances.
 2. This Ordinance shall not prohibit collectors of refuse or rubbish from areas other than McKinley County from hauling such refuse over the public streets and ways of McKinley County, provided such collectors comply with the provisions of this Ordinance and with any other governing laws or ordinances.
- B. It shall be unlawful for any person to allow any refuse to collect or accumulate on any lot or other premises within the County of which he is owner, tenant, lessee, manager, or occupant. Any such unauthorized accumulation or collection is hereby declared to be a nuisance and is prohibited. This includes the existence of buildings or structures which are ruined, damaged and/or dilapidated.

1. In the event such person fails or refuses to remove such accumulation or collection of refuse or rubbish, the County Manager may cause the same to be removed at the expense of such person in accordance with Section VII, Paragraph C, herein.
 2. In the event the County is required to remove refuse under this subparagraph, the responsible party shall be billed and shall be required to pay the costs of removal within thirty (30) days.
 3. Upon failure or refusal of the responsible party to pay such costs, the County may initiate action in a court of competent jurisdiction to recover the costs of removal. An action filed by the County against a tenant, lessee, occupant or other non-owner shall not constitute a waiver or release of any claim against the owner of the property.
- C. All refuse in the County shall be disposed of in a licensed sanitary landfill, designated transfer station, or in a solid waste convenience center, or other solid waste collection point, that is operated, licensed or registered by the NWNMRSWA, or, a facility that is licensed and defined by the Environment Division of the State of New Mexico.
- D. Any person who generates yard waste or large waste appliances shall store the yard waste or large waste appliance in a manner which prevents unsightliness, insect or rodent infestation or harborage.
- E. Contagious Disease Refuse / Medical Waste - the removal of wearing apparel, bedding, or other refuse from homes or other places where highly infectious or contagious diseases have prevailed and any medical waste, should be performed under the supervision and direction of the District Health Officer or the Environment Department. Such refuse shall not be placed in collection facilities or stored or deposited in a sanitary landfill in McKinley County.
- F. Explosive Refuse - dangerously flammable or explosive materials shall not be placed in collection facilities, and shall be disposed of as directed by the Environment Division of the State of New Mexico in appropriately licensed sanitary landfills for hazardous wastes. Such disposal shall be accomplished at the expense of the owners or possessors thereof.
- G. Special or Specific Waste - waste which has characteristics not compatible with the sanitary landfill, which must be specially handled, or which requires special operations shall be disposed of as directed by the Environment Division at the expense of the owner or possessors thereof. Such fees may be established by Resolutions, lawfully adopted by the Board of County Commissioners, as are reasonably necessary to carry out the requirements of this subparagraph.
- H. Receptacles - for the purposes of this ordinance, any collection site or system including the transfer stations and convenience centers or collection point operated by the NWNMRSWA shall be considered as proper places for the disposal of litter, refuse and rubbish.

- I. Rules and Regulations - notwithstanding this Ordinance, the NWNMRSWA has the authority to make other reasonable regulations concerning collection and disposal of solid waste as shall be deemed necessary in it's discretion.
- J. Burning - garbage, litter, refuse, rubbish, and/or weeds shall only be burned in accordance with state law and applicable rules regulation of the Environment Department of the State of New Mexico and the McKinley County Open Fire and Unattended Burning Ordinance. The proper burning of dried vegetation can be permitted as an alternative to the over burdening of any solid waste system.

SECTION IV - PROHIBITED ACTIVITIES / LITTER

- A. Litter in Public Places - no person shall throw or deposit litter in or upon any street, sidewalk, or other public or privately-owned place within the County except in public receptacles or in authorized private receptacles of collection or in any licensed sanitary landfill.
- B. Placement of Litter in Receptacles so as to Prevent Scattering - persons placing litter in public receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street or other public or private place.
- C. Sweeping Litter into Gutters Prohibited - no person shall sweep into or deposit in any gutter or other public or private place within the County, the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk and driveways abutting their business or home premises clean and free of litter.
- D. Litter Thrown by Persons in Vehicles - no person, while a driver or passenger in any vehicle, shall throw or deposit litter upon any private property, any street, road or other public place within the County.
- E. Truck Loads Causing Litter - no person shall drive or move any truck or other vehicle with refuse of any type within the County unless such vehicle is so constructed or loaded so as to prevent any load or contents from being blown or deposited upon any street, road, alley or other private or public place.
- F. Litter in Parks - no person shall throw litter in any parks within the County except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other private, or public place. Where public receptacles are not provided, all such litter shall be carried away from the park by the person responsible for its presence, and that person shall see to its proper disposal.

- G. Dropping Litter from Aircraft - no person in an aircraft shall throw out, drop or deposit within the County any letter, handbill, litter, refuse or any other object from the aircraft.
- H. Litter on Occupied Private Property - no person shall throw or deposit litter on any occupied private property within the County, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, road, sidewalk, or public place, or upon any private property.
- I. Owner to Maintain Premises Free of Litter - the owner or person in control of any private property shall at all times maintain the premises free of litter, provided, however, that this subparagraph shall not prohibit the storage of litter in authorized private receptacles of litter in authorized private receptacles for disposal.
- J. Litter on Vacant Lots - no person shall throw or deposit litter on any open or vacant private property within the County, whether owned by such person or not.
- K. Litter in Lakes and Fountains - no person shall throw or deposit litter in any fountain, pond, lake, stream, ditch, depression, hole, arroyo, or in any other body of water whether located in a park or elsewhere in the County.
- L. Receptacles - for the purposes of this ordinance, the transfer stations and convenience centers operated by the NWNMRSWA shall be considered as proper places for the disposal of litter.
- M. Clearing of Litter from Private Property by County - In the event such person fails or refuses to remove such accumulation or collection of refuse or rubbish, the County Manager may cause the same to be removed at the expense of such person in accordance with Section VII, Paragraph C, herein.

SECTION V - PROHIBITED ACTIVITIES / HAZARDOUS WASTE

It shall be unlawful to improperly or illegally dispose of hazardous materials or wastes in any manner other than as provided in the Hazardous Waste Act, Chapter 74, Articles 4 and 4A, being Sections 74-4-1, *et seq.* And 74-4A-1 *et seq.*, NMSA 1978, as amended.

SECTION VI - PROHIBITED ACTIVITIES / WEEDS AND DEBRIS

- A. Duty of Property Owner - it shall be unlawful and a violation of this Ordinance for the owner, agent, lessee or occupant of any lots, tracts, or parcels of land within the County to allow weeds, bushes, deleterious, noxious or unhealthful growths to lie, grow or be located thereon. Such prohibition shall not apply to lands which are primarily agricultural in nature or property that has never been developed (existing in natural conditions), except that owners of such

lands shall be required to cut or pull weeds within twenty (20) feet of any house, building, or any other adjoining structure or improved property.

- B. Composing - the composing of vegetation matter is permissible as long as the Health and Safety provisions of this Ordinance are not violated.
- C. County Rights-of-Way - the County owned Rights-of-Way listed on the County maintenance system shall be maintained under the standards for County road maintenance to aid safe driving conditions. Any weeds in an easement, parking, or any easement adjacent to or part of a parcel or lot, are considered part of that lot for purposes of this Ordinance.
- D. Clearing of Weeds and Debris from Private Property by County - the provisions of Section VII, Paragraph C, shall apply to the removal of weeds and debris by the County, except for those weeds as listed in Paragraph B, of this Section.

SECTION VII - PENALTIES, ENFORCEMENT, CLEAN UP BY COUNTY

A. Penalties

- 1. General Civil Penalties - in addition to any penalties listed below, any person who shall violate any of the provisions of this Ordinance shall be subject to a civil fine in the amount of \$300.00 and an order of the court requiring removal of all garbage, litter, refuse, rubbish and/or weeds which have been disposed of in violation of this Ordinance. See NMSA 1978 §4-37-3(A).
- 2. Litter and Refuse Criminal Offence - any person who shall violate the provisions of this ordinance pertaining to the discarding or disposing of refuse, litter or garbage shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or imprisonment in the County Jail for a period not exceeding one hundred and eighty (180) days or both. See NMSA 1978 §4-37-3(A)(1).
- 3. Hazardous Waste Penalties - whoever is found guilty of violating the provisions of this Ordinance regarding Hazardous Waste shall be imprisoned for not more than ninety (90) days or fined an amount not to exceed Five Thousand Dollars (\$5,000.00), or both. See NMSA 1978 §4-37-3(A)(2).

B. Enforcement - this Ordinance may be enforced by:

- 1. Any law enforcement officer having jurisdiction in the County of McKinley;
- 2. Any code enforcement officer of McKinley County;
- 3. Any employee(s) of McKinley County authorized by the Board of County Commissioners to issue citations for violations of this Ordinance; and,

4. Any code enforcement officer of the NWNMRSWA or employees of the same designated by the Board of the NWNMRSWA.

C. Procedure for Clearing Litter, Weeds, Refuse or Rubbish from Private Property by County; Recovery of Costs; Lien on Property

1. Notice to Remove - the County Sheriff (or any deputy), County Manager (or authorized county employee), NWNMRSWA Code Compliance Officer or authorized employee, are all hereby authorized and empowered, (upon receipt of a written signed complaint), to notify the owner of any private property within the County or the agent of such owner to properly dispose of litter, weeds, refuse or rubbish located on such owner's property. Such notice shall be in writing and either mailed or served in person, or posted on the property.
2. Time to respond - the owner or agent shall be given the following time limits in order to properly dispose of such litter, weeds, refuse or rubbish: ten (10) days after receipt of written notice or fifteen (15) days after the date of such notice in the event the letter is returned to the authorized officer because of inability to make delivery thereof, provided the same has been properly addressed to such owner or agent at his last known address.
3. Administrative Procedures before the County Commission - upon the failure, neglect, or refusal of any owner or agent so notified as stated in paragraphs 1 and 2 above, the County Commission is authorized and empowered to proceed with the administrative process outlined herein.
4. Resolution - whenever any building or structure is ruined, damages and dilapidated, or any premises is covered with ruins, rubbish, wreckage, debris or refuse, the County Commission may by resolution find that the ruined, damaged and dilapidated building, structure or premises is a menace to the public comfort, health, peace or safety and require the removal from the property and proper disposal of the building, structure, ruins, rubbish, wreckage, debris or refuse.
5. Complaint; Hearing - any resolution adopting findings as outlined above, shall be adopted after the receipt of a written complaint from any person. The complaining party must appear at the meeting/hearing and present evidence on the condition of the property complained about. The resolution shall be based on the evidence presented and the resolution shall state specific findings.
6. Service of Resolution - a copy of the resolution shall be served on the owner, occupant or agent in charge of the building, structure or premise. If the owner, as shown by the 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 premise and a copy of the resolution shall be published one time in a news paper of general circulation.

7. Owner Responsible for Removal: Time - within ten days of the receipt of a copy of the resolution or of the posting and publishing of a copy of the resolution, the owner, occupant or agent in charge of the building, structure or premise shall commence removing the building, structure, ruin, rubbish, wreckage, litter, weeds, debris or refuse, or file a written objection with the County Clerk asking for a hearing before the County Commission to present evidence why the resolution should be rescinded.
8. Owner Right to Object: Hearing- if a written objection is filed as required in this section, 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 resolution at the hearing; and,
 - (3) determine if the resolution should be enforced or rescinded.
9. Appeal - any person aggrieved by the determination of the County Commission may appeal to the district court by:
 - (1) giving notice of appeal to the County Commission within five days after the determination was made by the County Commission; and
 - (2) filing a petition in the district court within twenty days after the determination made by the County Commission. The district court shall hear the matter de novo and enter judgment in accordance with its findings.
 - (3) This appeal provision does not supplant any private right to file a complaint based in nuisance.
10. Option of County to Remove- if the owner, occupant or agent in charge of the building, structure, ruins, or premise fails to commence removing the rubbish, wreckage, litter, weeds, refuse or debris:
 - (1) within ten days of being served a copy of the resolution or of the posting and publishing of the resolution; or
 - (2) within five 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 at it's option, remove the building, structure, ruins, rubbish, wreckage, refuse, litter, weeds or debris at the cost and expense of the owner.
11. Cost of Removal Billed to Owner - in the event the County elects to arrange for the removal and disposal (by its employees or an agent), the owner shall be billed and shall pay the costs of removal within thirty (30) days.

12. Failure to Pay Costs - upon failure or refusal of the owner or agent to pay such costs, the reasonable cost of the removal and disposal shall constitute a lien against the building, structure, ruin, rubbish, wreckage, litter, weeds, refuse or debris so removed and shall apply against the lot or parcel of land from which it was removed. The lien shall be foreclosed in the manner provided by State law, and shall include the court cost of foreclosing the lien and attorney fees, costs, costs of sale.
13. Title to Salvage - the County may pay for the costs of removal of any condemned building, structure, wreckage, rubbish, refuse, litter, weeds, or debris by granting to the person removing such materials, the legal title to all salvageable materials in lieu of other compensation.
14. Cleanup in Safe Condition - any person or firm removing any condemned building, structure, wreckage, rubbish, refuse, litter, weeds, 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. The wreckage, rubbish, refuse, litter, weeds, or debris shall be disposed of in a proper location.
15. Removal in Emergency Situation - in the event the County determines that the existence of litter, weeds, rubbish, refuse or debris located on private property creates an immediate threat to the public health, safety or welfare of the citizens of McKinley County, the notice provisions set forth herein may be waived, and the litter, weeds, rubbish, refuse or debris creating the hazard may be disposed of immediately by the County, and the costs of removal shall be paid by the owner as set forth herein.

SECTION IX - EFFECTIVE DATE; VALIDITY, REPEALER

A. Effective Date - this Ordinance shall be effective thirty (30) days following its recordation in the McKinley County Clerk's Office, which shall occur following its approval by the Board of County Commissioners, as provided for by law.

B. Severability - in the event any section, clause, paragraph or provision of this Ordinance be declared by a Court of competent jurisdiction to be invalid, illegal or unenforceable, then in such, the remainder of the sections, clauses, paragraphs or provisions of this Ordinance shall continue in full force and effect and be interpreted as though such invalid, illegal or unenforceable provision had never been contained herein.

C. Repealer - this Ordinance repeals and replaces any previous Ordinance on the same or similar subject matter.

PASSED, ADOPTED AND APPROVED on this 8th day of October, 1998.

BOARD OF COUNTY COMMISSIONERS
MCKINLEY COUNTY, NEW MEXICO

Earnest C. Becenti Sr.
Earnest C. Becenti, Sr., Chairperson

Ben Shelly
Ben Shelly, Commissioner

Harry H. Mendoza
Harry Mendoza, Commissioner

ATTEST
Carol K. Sloan
Carol K. Sloan, County Clerk

[Signature]
MCKINLEY COUNTY, NEW MEXICO