

LINCOLN COUNTY-NM
TAMMIE J MADDOX, CLERK
200809426
Book 4 Page 339
1 of 8
11/19/2008 10:37:45 AM
BY LOREE1



LINCOLN COUNTY ORDINANCE NO. 2008-07

AN ORDINANCE PROVIDING FOR THE EFFICIENT AND SANITARY COLLECTION OF SOLID WASTE IN LINCOLN COUNTY; PROVIDING FOR MANDATORY DISPOSAL AND ASSESSMENT OF FEES; PROVIDING A PENALTY FOR VIOLATION OF THE ORDINANCE; AND REPEALING ORDINANCE 2008-06.

WHEREAS, the Board of County Commissioners of Lincoln County finds the following Ordinance necessary to provide the efficient and sanitary collection, transportation and disposal of solid waste in Lincoln County; and

WHEREAS, the Board of County Commissioners of Lincoln County finds it necessary to provide a fair and equitable procedure to allocate the cost of solid waste collection among the residents and businesses outside the municipalities who use such services; and

WHEREAS, the Board of County Commissioners of Lincoln County is delegated the authority pursuant to NMSA 1978, §4-56-1, *et seq.*, to "... establish and maintain, manage and supervise a system of storage, collection and disposal of all refuse"; and

WHEREAS, the Board of County Commissioners of Lincoln County has participated in establishing the Lincoln County Solid Waste Authority for the purpose of providing a coordinated County-wide program for the collection of solid waste cooperation with the incorporated municipalities of Capitan, Carrizozo, Corona, and Ruidoso Downs; and

WHEREAS, a mandatory system of solid waste collection is necessary in order to protect the environs of Lincoln County from illegal dumping by lack of a County-wide system of refuse collection containers; and

WHEREAS, it is necessary that a mandatory solid waste collection program continue, in order to protect the health, welfare and safety of the citizens of Lincoln County.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY AS FOLLOWS:

Section 1. Short Title.

This Ordinance shall be referred to as the Solid Waste Collection and Disposal Ordinance of the County of Lincoln, New Mexico.

Section 2. **Definitions.**

As used in this ordinance:

- A. "Garbage" is defined as all waste foods, swill, carrion, slops and all waste from the preparation, cooking and consumption of food and from the handling, storage and sale of food products and carcasses of animals.
- B. "Refuse" is defined as all junked parts or bodies of automobiles, tires, waste paper, paper cartons, cardboard, trees, tree branches, yard trimmings or clippings, leaves, pine needles, wood, glass, plastic, discarded furniture or appliances, tin cans, bottles, dirt, ashes, liquid petroleum waste, such as motor oil and such similar items, and all other unwholesome material of every kind, not including garbage or debris.
- C. "Debris" is defined as all waste building material, bricks, concrete blocks, shingles, roofing material, lumber, metal or plastic piping, commercial construction wastes and any other matter that is commonly know as debris.
- D. "Responsible party" is defined as the owner or tenant of any premise, whether vacant, improved or unimproved, used primarily for either a private or business purpose, who is responsible for payment of the mandatory fee for collection.
- E. "Owner" is defined as the owner, whether residing in said premises or not, of any property located outside the corporate boundaries of the municipalities of Capitan, Carrizozo, Corona, and Ruidoso Downs, within the County of Lincoln.
- F. "Solid Waste" is defined as garbage, refuse and/or debris of any kind generated by an individual, household or commercial establishment.
- G. "Premises" is defined as an improved or unimproved structure, whether designed for private or commercial use, located on any property outside the corporate limits of the

municipalities of Capitan, Carrizozo, Corona, and Ruidoso Downs in the County of Lincoln, and is the unit upon which mandatory fees are assessed and collected.

Section 3. Mandatory Collection and Disposal of Garbage, Refuse, Rubbish and Debris.

- A. The accumulation or disposal of garbage, refuse, rubbish and/or debris, except as provided by this Ordinance is a violation of the Lincoln County Ordinance regarding refuse, solid waste, and litter and this Ordinance.
- B. All garbage, refuse, rubbish, and debris generated by an owner or tenant on the premises of the responsible party shall only be deposited in a solid waste container authorized by the County or the Lincoln County Solid Waste Authority, except as provided in Section 7 herein.

Section 4. Powers of the County.

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

- A. Execute contracts on behalf of the County, with any municipality, county or other local unit of government, including the Lincoln County Solid Waste Authority, or any private entity for the collection, transportation and disposal of solid waste generated in the unincorporated areas of Lincoln County;
- B. Regulate the collection, transportation, and disposal of refuse by any entity performing collection services on behalf of Lincoln County in the unincorporated areas of Lincoln County;
- C. Establish, assess, and collect fees directly, or through its authorized agent, from responsible parties using the solid waste collection system in amounts sufficient to pay the necessary costs of the collection, transportation and disposal system;

- D. Coordinate the collection, transportation, and disposal of solid waste, in consultation with the New Mexico Department of Environment.

Section 5. Mandatory Fee.

- A. Participation in the solid waste collection system is mandatory on each responsible party in the unincorporated areas of Lincoln County, except as provided in Section 7 herein.
- B. The Lincoln County Board of Commissioners shall set fees for solid waste collection based on the actual cost to collect, transport and dispose of such solid waste; however, Lincoln County Solid Waste Authority shall have the power to set fees for Commercial rates and rates for special services, including but not limited to grapple and roll-off services.
- C. The Board of County Commissioners of Lincoln County shall establish a system of fees, pursuant to resolution of the Board, which is duly introduced before the Board of County Commissioners of Lincoln County after the Board of County Commissioners has provided notice of the meeting at which final action on the resolution to establish a system of fees is to be taken.
- D. Such notice of public hearing shall be published once in a newspaper of general circulation within the boundaries of Lincoln County at least twenty (20) days prior to said public hearing.
- E. In the event that any responsible party, pursuant to this Section, fails to make payment of the fees within thirty (30) days of the due dates set forth pursuant to the billing, said party shall be subject to a late fee as established by the Lincoln County Board of Commissioners from time to time. In the event the responsible party fails

to pay the fees set forth herein for more than one (1) billing cycle, the penalty shall be assessed for each billing cycle for which payment remains outstanding.

Section 6. Liens.

- A. All fees arising under this Ordinance shall be payable by the responsible party of the tract or parcel of land being served at the time the rate or charge accrues and becomes due, and the County of Lincoln shall be entitled to a lien upon the tract or parcel of land being served pursuant to the authority granted under NMSA 1978, §§3-36-1, *et seq.*, and NMSA 1978, §4-37-1, *et seq.*, which lien shall be a first and prior lien on the property, coequal with municipal liens pursuant to NMSA 1978, §3-26-2, 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 NMSA 1978, §§3-36-1 through 3-36-7. For purposes of this Section, such action shall be taken by the Lincoln 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. Notice of the lien shall be filed in the manner provided in NMSA 1978, § 3-36-1, and the effect of such filing shall be governed by NMSA 1978, §3-36-2.
- C. The charges and fees imposed herein are the responsibility 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, except as provided in paragraph D, below.
- D. Paragraph C of this section shall not apply if an owner notifies the County of Lincoln

or its designee that charges that may be incurred by a tenant shall not be the responsibility of the owner. Such notification shall be given in writing prior to the initiation of the debt and shall include the location of the rental property.

Section 7. Exception Procedures.

- A. An owner may request a waiver of the solid waste collection fee if the landowner has at least three-hundred (300) contiguous acres of land with adequate disposal sites per household, obtains a permit from the State Environment Department, agrees to comply with all other provisions of the State regulations as to disposal, and if the solid waste that is generated on that property does not harm the environment or endanger the public health, welfare or safety.
- B. The owner or tenant shall only dispose of waste in accordance with any regulations of the Environmental Improvement Board or the New Mexico Water Quality Control Commission, as determined by the New Mexico Environment Department. The owner or tenant must also comply with the Lincoln County Ordinance regulating refuse, solid waste, and litter, as amended and supplemented, regarding the unauthorized accumulation and disposal of solid waste.

Section 8. Not Applicable to Certain Areas.

This Ordinance does not apply to property inside the boundaries of incorporated municipalities or water and sanitation districts which operate in house or by contract collection, transportation and disposal of solid waste.

Section 9. Penalties.

- A. Persons violating this Ordinance shall, upon conviction, be subject to a fine not to exceed Three Hundred and No/100 Dollars (\$300.00) 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 refuse, litter or garbage on public or private property in any manner other than disposing it in an authorized landfill, shall, upon conviction, be subject to a fine not to exceed One Thousand and No/100 Dollars (\$1,000.00) pursuant to NMSA 1978, §4-37-3 (A)(1).
- C. Persons violating this Ordinance by the improper or illegal disposal of hazardous materials or waste in any manner other than as provided for in the Hazardous Waste Act, shall, upon conviction, be subject to a fine not to exceed Five Thousand and No/100 Dollars (\$5,000.00) pursuant to NMSA 1978, §4-37-3(A)(2).
- D. Each violation shall constitute a separate offense. Each day an offense continues shall also constitute a separate offense.

Section 10. Severability.

In the event any Section, part or sub-part of this Ordinance shall be determined to be in violation of the Constitution or Statutes of the State of New Mexico by a Court of competent jurisdiction, that Section shall be stricken and be thereafter unenforceable. Such determination shall not invalidate the application or enforcement of the remaining Sections.

Section 11. Conflict Clause.

Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 12. Effective Date.

This Ordinance shall take effect thirty (30) days after recording in the Public Records of Lincoln County.

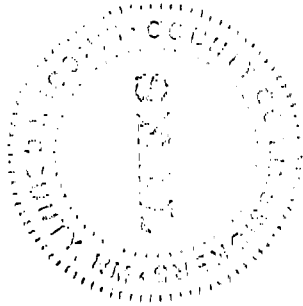
Section 13. Repeal.

Lincoln County Ordinance 2008-06 is repealed upon the effective date of this Ordinance.

PASSED, APPROVED, and ADOPTED this 21st day of October, 2008.

BOARD OF COMMISSIONERS OF
THE COUNTY OF LINCOLN, NEW MEXICO

Tom Battin
Tom Battin, Chair



Eileen Sedillo
Eileen Sedillo, Vice Chair

Dave Parks
Dave Parks, Member

Don Williams
Don Williams, Member

Jackie Powell
Jackie Powell, Member

Attest:

Tammie Maddox
Tammie Maddox
Lincoln County Clerk

LINCOLN COUNTY-NM
TAMMIE J MADDOX, CLERK
200809426
Book 4 Page 346
8 of 8
11/19/2008 10:37:45 AM
BY LOREE1