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**ORDINANCE NO. 2003-02**

AN ORDINANCE REPEALING LINCOLN COUNTY ORDINANCE 1998-11 AND ENACTING AN ORDINANCE WHICH REGULATES REFUSE, SOLID WASTE, AND LITTER IN LINCOLN COUNTY, REPEALING ORDINANCES IN CONFLICT; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lincoln County finds it necessary to repeal Ordinance 1998-11, and enact a new Ordinance to protect the health, safety, and welfare of the citizens of Lincoln County; and

WHEREAS, the Board of County Commissioners of Lincoln County finds that this Ordinance is necessary and proper to provide for safe and sanitary collection and disposal of refuse and solid waste, and control litter; and

WHEREAS, the Board of County Commissioners of Lincoln County finds that this Ordinance is necessary to provide a coordinated county-wide program of control of refuse and solid waste in cooperation with the Federal and State agencies; and

WHEREAS, the Board of County Commissioners of Lincoln County has determined that is necessary and proper to protect the waters, both underground and flowing in rivers, creeks, and streams, through the enactment of regulations concerning the proximity of disposal of refuse and solid waste to underground and surface water; and

WHEREAS, the Board of County Commissioners of Lincoln County has determined that it is necessary to adopt the powers enumerated in NMSA 1978, §4-56-1, *et seq.*, for the storage, collection, and disposal of refuse and solid waste; and

WHEREAS, the Board of County Commissioners of Lincoln County finds that this Ordinance is necessary to protect the environment and promote the preservation of the natural beauty of Lincoln County lands.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Lincoln County as follows:

**Section 1. Definitions.**

For the purpose of this Ordinance, the following terms, phrases, words and their derivatives shall have the meanings stated herein:

“Arroyo” shall include any canyon, draw or wash or any other earthen channel with visible evidence of the occasional flow of water.

“County Manager” is the chief administrative assistant to the Board of County Commissioners of Lincoln County.

“Flood Plain” is the relatively flat area or low land adjoining the channel of a watercourse or a body of standing water which has been or may be covered by flood waters, and which has a one (1%) percent chance of occurring in a given number of years, the limits of which are shown on a HUD Flood Hazard Boundary Map.

“Garbage” includes all waste food, 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 the carcasses of animals.

“Ground Water” means interstitial water which occurs in saturated earth material, and which is capable of entering a well in sufficient amounts to be utilized as a water supply.

“Hauler” is any person who collects refuse or debris from any property not owned by that person.

“Landfill” is a facility designed for the disposal of refuse and solid waste permitted in accordance with EID Regulation EID/SWMR-2 and this Ordinance.

“Litter” is refuse or debris found in public areas or generated while traveling in a motor vehicle.

“Person” is any individual, partnership, company, corporation, firm, association, trust, estate, state and federal agency, government instrumentality or agency, institution, county, city, town, village, or municipality or other legal entity, however organized.

“Refuse” includes garbage and rubbish.

“Rubbish” includes all junk, parts or bodies of automobiles, waste paper, paper cartons, tree branches, yard trimmings, discarded furniture, tin cans, dirt, ashes, bottles and all other unwholesome material of every kind, not including garbage.

“Solid Waste” is any refuse, debris, or other discarded material resulting from residential, industrial, or commercial operations from community activities.

“Water Table” is the surface in unconfined ground water at which the pressure is atmospheric and is defined by the levels at which water stands in wells that penetrate the water just far enough to hold standing water.

“Well” is a bored, drilled or driven shaft or a dug hole whose depth is greater than the largest surface dimension of the hole.

## **Section 2. Accumulation of Refuse, Solid Waste and Litter; Removal; Penalty.**

A. No person shall permit to accumulate upon premises owned, leased, or occupied by him, which are within two hundred feet (200') of another property boundary or public easement (prescriptive or otherwise), any refuse, solid waste, or litter, except in covered water-tight containers made of metal or plastic.

B. No person shall throw, dump, or dispose of any refuse, solid waste, or litter on any road, street, gutter, sidewalk, or alley; nor shall any person set fire or cause or procure a fire to be set to any trash, refuse, garbage, or solid waste unless in an incinerator which has been approved by the fire chief or health authority of the County. No cans, cartons, wrappings containing food or organic waste, hair, wool, rubber, plastic, or any other substance which would create offensive, obnoxious or dangerous fumes or odors shall be burned.

C. No person in control of that property or that causes such action shall cause or permit to remain upon any property, private or public, any refuse, solid waste, or any composition of residue thereof which is in an unsanitary condition or hazardous to public health.

D. Any unauthorized accumulation of solid waste or refuse is hereby declared to be a nuisance and is unlawful.

E. No person shall cast, sweep, or deposit anywhere within the County, solid waste, refuse, or litter elements upon the road, street, sidewalk, alley, sewer, parkway, or other public place within the County.

F. Subject to any limitations or otherwise provided by law, the Sheriff is authorized to inspect and enter upon any private property or private premises where he/she has probable cause to suspect that unlawful accumulations of solid waste, refuse, or litter may exist.

1. If, upon the basis of such inspections, the Sheriff finds that any of Subsections A-E of this Section have not been complied with or that a violation exists, he/she shall notify the person in charge of the premises (whether owner, tenant, lessee, manager, or other person), where the unlawful solid waste, refuse, or litter accumulations exist, to properly correct such conditions 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 conditions as set forth herein, within the time prescribed (or within five [5] days of the return of such prescribed notice undeliverable if the notice is served by mail), the Lincoln County Board of Commissioners may contract for the correction of 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.
3. The cost for correction shall be a lien upon the property and shall remain in full force and effect for the amount due plus interest at the legal rate from the date of filing of the lien until paid, and all other costs, including attorney's fees. The lien shall be enforced and foreclosed according to applicable State law.

G. Where the Sheriff finds that a clear and present danger exists to the public health, welfare, and safety due to certain unlawful accumulations of solid waste, refuse, or litter 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 unlawful accumulation of solid waste, refuse or litter shall be determined on the basis of man-worked hours, equipment at a customary rental rate per day, plus any direct cost paid by the County to correct the accumulation.

I. Nothing in Paragraph F of this Section shall be construed to require any notice before the filing of a Magistrate Court action for a civil or criminal violation of this Section.

J. Penalty. Violation of this Section, in addition to any other cost assessed for the cleanup of illegal stored or deposited solid waste, refuse or litter, shall be punished under the Provisions of Section 11 of this Ordinance.

### **Section 3. Refuse and Solid Waste; Pre-collection Practices.**

A. Refuse or solid waste, if not properly stored on the premises where it is generated, shall be placed and maintained in Lincoln County Solid Waste Authority containers, the Otero/Lincoln County Solid Waste Landfill, or other refuse and solid waste disposal facility(ies) licenced and permitted in conformance with applicable State law, State regulations and this Ordinance.

B. It shall be the responsibility of all persons to dismantle and/or flatten all boxes or packing crates, regardless of construction, and to place the same in Lincoln County Solid Waste Authority containers.

C. Solid waste or refuse disposed of in containers provided by the County shall be first deposited in bagged and closed containers.

D. Toxic and hazardous waste, liquid petroleum, distillates, and similar liquid materials shall not be disposed of in Lincoln County Solid Waste Authority containers, but in accordance with Section 6 of this Ordinance.

E. **Disposal of ashes.** "Ashes" means fire residue of any kind, including, but not limited to, fireplace ashes, barbecue grill briquettes, wood chips, wood stove ashes, campfire ashes, hot waste or other material susceptible of spontaneous combustion. It is unlawful to dispose of hot ashes in any manner. Hot ashes may become cold ashes and subject to disposal by

- A. Cooling in place for a minimum of forty-eight (48) hours and inspection to determine that no live embers capable of spontaneous combustion are present; or
- B. Extinguishment with water or sand and stirring to the point where inspection reveals that no embers capable of spontaneous combustion are present.
- C. Cold ashes shall be placed in a bag or other enclosed container before placing in a refuse container.

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**Section 4. Refuse Containers.**

A. Commercial haulers are expressly prohibited from the use of Lincoln County Solid Waste Authority containers for the disposal of refuse and solid waste collected on a fee basis. Violations are subject to the penalties provided in Section 11 in this Ordinance.

B. Mobile Home Parks: Every mobile home park shall provide for the collection of not less than .5 cubic yard of refuse or solid waste weekly per mobile home space. If the Lincoln County Solid Waste Authority Manager determines that additional refuse containers are necessary, he/she may order such additional containers as may be required to prevent excessive solid waste, refuse or litter or any hazard to the public or residents of the park.

C. Condominium/Multi-family Residential Units: Every condominium or multi-family residential development consisting of ten (10) or more units shall provide for the collection of not less than .5 cubic yard of refuse or solid waste weekly per residential unit. If the Lincoln County Solid Waste Authority Manager determines that additional refuse containers are necessary, he/she may order such additional containers as may be required to prevent excessive solid waste, refuse or litter or any hazard to the public or other residents of the residential development.

D. All users of the Lincoln County Solid Waste Authority containers shall comply with the rules and regulations established by the County 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. All refuse and solid waste shall be placed in a container provided by the Lincoln County Solid Waste Authority and shall be reduced in size to no more than four (4') feet in length. No items in excess of these dimensions or weighing more than fifty (50) pounds shall be placed in the refuse containers provided by the County.

F. In the event that a refuse container provided by the Lincoln County Solid Waste Authority is full, refuse or solid waste shall not be placed on the ground or in proximity to the container so as to constitute a litter or health hazard or the possibility that the refuse may become blown and scattered.

G. It is unlawful to impede access to a Lincoln County Solid Waste Authority container other than necessary for the time to remove and deposit refuse or solid waste in the receptacle.

**Section 5.     **Damage to Refuse Containers.****

- A.     It is prohibited for any person, including children, to be on or in refuse containers for any purpose.
- B.     It is unlawful to intentionally damage any refuse container owned or leased by the County.
- C.     Any individual who damages any such container provided for County residents shall be liable to the County for the cost, repair, or replacement of such container, in addition to the penalties provided in Section 11 of this Ordinance.

**Section 6.     **Toxic, Hazardous, Ignitable, Flammable, or Explosive Refuse and Solid Waste or Refuse.****

- A.     Poison, acids, caustics, chemicals, waste contaminated by infectious diseases, radioactive waste, dead animals, live pests, rocks, sand, dirt, concrete, bricks and building materials, toxic, highly flammable or explosive materials shall not be placed in containers for regular collection, but shall be disposed of in accordance with any applicable State and Federal laws or regulations at the expense of the person accumulating the waste.
- B.     Yard waste, including grass and tree clippings, pine needles, leaves, and cut weeds shall not be placed in the containers provided by the Lincoln County Solid Waste Authority, but shall be disposed of in an approved landfill or in accordance with any applicable State and Federal laws or regulations at the expense of the person accumulating the same.

**Section 7.     **Construction Sites And Transportation of Materials.****

- A.     All persons who have secured a State building permit shall, before the start of any construction activity in the County, furnish or place on those premises a container or fenced area of suitable size and design to contain all refuse, solid waste or litter which may be disturbed or removed from the premises by the wind or elements. Within five (5) days of completion, all refuse, solid waste and refuse containers shall be removed from the premises.
- B.     No person generating refuse or solid waste shall allow refuse, solid waste or litter of any kind to be blown or carried by the elements from the premises for which the building permit was secured.

C. Persons engaged in demolition, who have obtained a State permit, shall remove the refuse, solid waste, and litter, including structural parts, from the construction site and contain their elements from scattering in the same manner as set out above. Demolition refuse or solid waste shall be removed and disposed of within five (5) days of completion to an approved refuse and solid waste landfill.

**Section 8. Scavenging Prohibited.**

It is unlawful for any person not authorized by the County to remove, collect, or disturb the refuse or solid waste stored in a Lincoln County Solid Waste Authority landfill or refuse container. No person shall remove any refuse or solid waste from a container and scatter the same upon any public or private property.

**Section 9. Regulations Adopted.**

A. The laws of the State of New Mexico dealing with refuse and solid waste management and all regulations promulgated and published pursuant to those laws for the New Mexico Health and Environmental Department or any division thereof, including, but not limited to the Environmental Improvement Division (or any successor department, agency or division), along with any subsequent revision or amendments to such laws or regulations, are hereby adopted and incorporated herein by this reference and made a part of this Ordinance; provided, however, that the penalty provisions provided herein shall apply to violations prosecuted under this Ordinance.

B. No person shall establish or operate a refuse or solid waste disposal facility without first obtaining a permit from the Board of County Commissioners of Lincoln County. The application for and granting of a refuse or solid waste disposal facility permit by the County Commissioners shall be governed by the regulations regarding the application and granting of refuse and/or solid waste permits, from time to time published by the Environmental Improvement Division, together with the additional requirements established by this Ordinance.

**Section 10. Refuse and Solid Waste Landfill Regulations.**

A. No solid waste or refuse disposal site shall be established or operated, nor shall any person dump, store, or otherwise dispose of any refuse or solid waste within ten thousand feet (10,000') of any airport, as established by the Federal Aviation Administration.

B. No refuse or solid waste disposal site or facility shall be established or operated, nor shall any person dump, store, or otherwise dispose of any refuse or solid waste within two (2) miles of the middle of the Ruidoso River, the Bonito River, the Hondo River, the Carrizo Creek, the Eagle Creek, the Magado Creek, or any other flowing watercourse within Lincoln County.

C. No refuse or solid waste disposal site or facility shall be established or operated, nor shall any person dump, store or otherwise dispose of any refuse or solid waste within a flood plain, subject to a one hundred year flood, as designated by the appropriate state or federal agency.

D. No solid waste or refuse disposal site or facility shall be established or operated, nor shall any person dump, store or otherwise dispose of any refuse or solid waste in any location where the ground water or the water table is less than one hundred feet (100') below the surface of the land or the bottom surface of any proposed refuse pit, whichever is more restrictive.

E. No refuse or solid waste disposal site or facility shall be established or operated, nor shall any person dump, store or otherwise dispose of any refuse or solid waste within any arroyo as defined in this Ordinance.

F. No solid waste or refuse disposal site or facility shall be established or operated, nor shall any person dump, store, or otherwise dispose of any solid waste or refuse in other than authorized containers, within the visible sight of a United States or New Mexico State Highway or County road existing within the County unless such site is blocked, shielded, or otherwise hidden from view.

G. Notwithstanding anything contained elsewhere in this Ordinance to the contrary, the regulations set forth in this Section 10 shall not apply to the following:

1. a property owner, farmer, or rancher who, on his own property, disposes of solid waste generated on his own property;
2. a property owner who, on his own property for fill purposes, disposes construction/demolition waste or yard waste generated on his property;
3. agricultural wastes, including manures and crop residues, returned to the soils as fertilizers or soil conditioners; and
4. domestic sewage or septage of a property owner generated on his property.

H. It is mandatory that any operating landfill pit be dug crossways to the prevailing winds.

I. An eight foot (8') chain link fence is required around each landfill pit.

**Section 11. Penalties.**

- A. Persons convicted of violating of this Ordinance shall be punishable by a fine of Three Hundred Dollars (\$300) or imprisonment for ninety (90) days or both the fine and imprisonment, except as set forth in paragraphs B, C, and D below.
- B. Persons violating this Ordinance by discarding or disposing of solid waste or debris 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).
- 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).
- D. Each violation shall constitute a separate offense. Each day an offense continues shall also constitute a separate offense.

**Section 12. Permit Procedures.**

- A. The Board of County Commissioners of Lincoln County, after following all procedures prescribed by this Ordinance, may by two-thirds (**b**) majority vote at a public meeting, grant a Solid Waste or Refuse Disposal Permit.
- B. The purpose of the permit procedure is to ensure that the regulatory requirements set forth in this Ordinance are met, in addition to those imposed by the State of New Mexico and the Environmental Improvement Division (EID).
- C. The permit procedure commences with the filing of a Solid Waste Disposal Permit Application with the County Manager, accompanied by an approved permit from the appropriate agency of the State of New Mexico. The information requested in that Application regarding disclosure and verification is referred to hereby and incorporated herein by reference as if more fully set forth.
- D. Upon certification by the County Manager's Office that the Solid Waste Permit Application is complete, the request will be transmitted to the Board of County Commissioners of Lincoln County for public hearing.
- E. Upon receipt of an application for any Solid Waste or Refuse Disposal Permit, the Board of County Commissioners of Lincoln County shall be given forty-five (45) days within which to hold a

public hearing regarding the effect of such proposed solid waste or refuse disposal upon the health, welfare and safety of the citizenry of the Lincoln County.

F. Prior to the public hearing before the Board of County Commissioners of Lincoln County, notice of the application for permit shall be published twice in a local newspaper of general circulation, fourteen (14) and seven (7) days prior to the public hearing. Notice of the public hearing shall be mailed, by certified mail, returned receipt requested, to the proposed applicants for the permit, as shown by the application submitted to the County Manager, at least ten (10) days prior to the first public hearing.

G. Within ninety (90) days immediately following the first public hearing regarding the application for permit, the Board of County Commissioners of Lincoln County shall have made a decision regarding the issuance of said permit. However, if no action has been taken by the Board of County Commissioners of Lincoln County within ninety (90) days after the first public hearing, said application shall be considered approved, and a permit shall be issued by the Board of County Commissioners of Lincoln County.

**Section 13. Severability.**

It is hereby declared to be the intention of the Board of County Commissioners that the sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be deemed severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

**Section 14. Recording.**

This Ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the County Clerk.

**Section 15. Repeal of Ordinance No. 1998-11.**

Upon the effective date of this Ordinance, Ordinance No. 1998-11 shall be considered repealed.

**Section 16. Effective Date.**

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

**PASSED, APPROVED AND ADOPTED** this the 21<sup>st</sup> day of January, 2003.

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