



LINCOLN COUNTY ORDINANCE NO. 2017-07

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; REPEALING ORDINANCE 2016-01.

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 §4-56-1, *et seq.* NMSA 1978 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 established a County-wide program for the collection of solid waste in unincorporated areas of Lincoln County; 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; and

WHEREAS, the Board of County Commissioners of Lincoln County finds it necessary to provide a system for establishing, amending, changing, and/or altering a system of fees by Resolution and providing for appropriate public input to such system of fees; and,

WHEREAS, the Board of County Commissioners of Lincoln County also finds it necessary to provide for the establishment of fees for delinquent payments or failure to make payments, and to provide a means of collecting associated court costs and attorney's fees in the lawful pursuit of collections of delinquent payments.

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. "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 known as debris.
- B. "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.
- C. "Habitable" is defined as suitable or fit in which to live.
- D. "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, Ruidoso and Ruidoso Downs, and any lawfully created Water and Sanitation District providing solid waste services within the County of Lincoln.
- E. "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, Ruidoso and Ruidoso Downs and any lawfully created Water and Sanitation District providing solid waste services in the County of Lincoln, and is the unit upon which mandatory fees are assessed and collected.
- F. "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.
- G. "Residence" is defined as any habitable dwelling or each single unit of multi-unit habitable dwellings.
- H. "Responsible Party" is defined as the owner of any premises, 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.
- I. "Solid Waste" is defined as garbage, refuse and/or debris of any kind generated by an individual, household or commercial establishment.
- J. "Uninhabitable" is defined as unsuitable or unfit in which to live.

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 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 agreements on behalf of the County, with any municipality, county or other local unit of government, 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 Environment Department.

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. Payment of the solid waste collection fee shall be the obligation of the responsible party for each residence and business located in the unincorporated areas of Lincoln County.
- C. If there are multiple residences or businesses on a property, the solid waste collection fee shall be assessed on each such residence or business.
- D. 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, the County of Lincoln's Contractor 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.

- E. 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.
- F. 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.
- G. In the event that any responsible party, pursuant to this Section, fails to make payment of 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. 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 §§3-36-1 *et seq.* NMSA 1978, and §4-37-1 *et seq.* NMSA 1978, which lien shall be a first and prior lien on the property, coequal with municipal liens pursuant to §3-26-2, NMSA 1978, 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 matter prescribed in §§3-36-1 through 3-36-7 NMSA 1978. For purposes of this Section, such action shall be taken by the Lincoln County Chair of the Board of County Commissioners upon a majority vote of Commissioners. 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 § 3-36-1 NMSA 1978, and the effect of such filing shall be governed by §3-36-2 NMSA 1978.
- 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. The responsible party shall be accountable for any legal fees and attorney's fees which result from the filing of any lien or from the prosecution of any legal action to collect past due fees owed to the County of Lincoln.

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 and if the solid waste that is generated on that property does not harm the environment or endanger the public health, welfare or safety. The owner must comply with the Lincoln County Solid Waste Ordinance regulating refuse, solid waste, and litter, as amended and supplemented, regarding the unauthorized accumulation and disposal of solid waste. Waiver of Solid Waste Collection Fee is attached to this Ordinance as Exhibit 1 and must be both submitted to and approved by the County.

- B. An owner of residential property shall have the opportunity to request a Waiver of the Solid Waste Collection Fee Due to Uninhabitability if the property is uninhabitable. The Waiver request shall be in writing with sufficient details provided to prove uninhabitability. The Waiver of the Solid Waste Collection Fee Due to uninhabitability is attached to this Ordinance as Exhibit 2 and must be both submitted to and approved by the County.
- C. An owner of property whose solid waste services are being provided by another Governmental Entity pursuant to a properly executed Memorandum of Understanding entered into between the County of Lincoln and the Governmental Entity shall be waived from the County of Lincoln Solid Waste Collection Fee.

Section 8. Not Applicable to Certain Areas.

This Ordinance does not apply to property inside the boundaries of incorporated municipalities or lawfully created 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 §4-37-3 (A)(1) NMSA 1978.
- 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 §4-37-3(A)(2) NMSA 1978.
- 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.

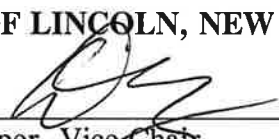
Lincoln County Ordinance 2016-01 is repealed upon the effective date of this Ordinance.

PASSED, APPROVED, and ADOPTED this 21st day of November, 2017.

BOARD OF COMMISSIONERS OF THE COUNTY OF LINCOLN, NEW MEXICO



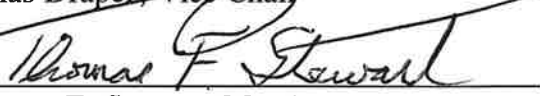
Preston Stone, Chair



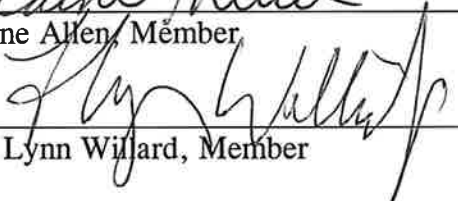
Dallas Draper, Vice Chair



Elaine Allen, Member

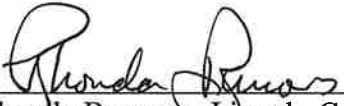


Thomas F. Stewart, Member



Dr. Lynn Willard, Member

ATTEST:



Rhonda Burrows, Lincoln County Clerk



**Exhibit 1: APPLICATION FOR WAIVER OF THE SOLID WASTE COLLECTION FEE
LANDOWNERS WITH 300 CONTIGUOUS ACRES OF LAND**

Section 7B of the Lincoln County Solid Waste Ordinance allows a landholder with 300 contiguous acres of land with adequate disposal sites per household, to request a waiver of the solid waste collection fee. Landowner must agree to comply with all provisions of New Mexico regulations as to disposal, and attest that the solid waste that is generated on that property does not harm the environment or endanger the public, welfare or safety.

LANDOWNER'S NAME(S) _____ LCSW Account # _____

Mailing address: _____
_____ Phone: _____

Legal Description (or map) of property:

Brief Physical Description of Land Location:

I, _____, hereby certify and attest to the following:
(Print name)

1. I am the legal owner of the land described above.
2. All information on this application is correct.
3. I have provided required documentation for On-Site disposal of domestic solid waste with this application.
4. I have provided a photo of the pit site where solid waste disposal takes place on above described land, and have provided a description of the location of the pit.
5. I dispose of ALL solid waste generated on my property. If I am found to be in violation of disposing of any solid waste generated on my property described above by other means, I may be cited and subject to a fine of up to three hundred dollars (\$300) and/or ninety (90) days in jail for each separate offense per the Lincoln County Solid Waste Ordinance.
6. I agree to fully comply with all remaining requirements of the Lincoln County Solid Waste Ordinance.

(Signature of Landowner) Date: _____

Submit this form by mail, email (lphillips@lincolncountynm.gov) or in person to LCSW Collections:
300 Central Avenue, Carrizozo, NM 88301

FOR OFFICE USE ONLY

DETERMINATION BY LINCOLN COUNTY SOLID WASTE

Approved _____ Denied _____ Date: _____ Comments: _____

(Signature: Lincoln County Manager)

**Exhibit 2: APPLICATION FOR WAIVER OF THE SOLID WASTE FEE
FOR UNINHABITABLE PROPERTIES**

Section 7B of the Lincoln County Solid Waste Ordinance provides that a landowner with an uninhabitable property may request a waiver of the solid waste collection fee.

LANDOWNER'S NAME(S) _____ LCSW Account # _____

Mailing address: _____

Phone: _____

Legal Description (or map) of property:

Brief Physical Description of Land Location:

I, _____, hereby certify and attest to the following:

(Print name)

1. I am the legal owner of the land described above.
2. All information on this Application is correct.
3. Attached to this Application are photos which prove uninhabitability.
4. The status of uninhabitability has been verified by the County of Lincoln Tax Assessor as being uninhabitable by his/her signature below.
5. If I am found to be in violation of disposing of any solid waste generated on the property described above, I may be cited and subject to a fine of up to three hundred dollars (\$300) and/or ninety (90) days in jail for each separate offense per the Lincoln County Solid Waste Ordinance.
6. I agree to fully comply with all remaining requirements of the Lincoln County Solid Waste Ordinance.

_____ Date: _____

(Signature of Landowner)

Submit this form by mail, email (lphillips@lincolncountynm.gov) or in person to LCSW Collections:

300 Central Avenue, Carrizozo, NM 88301

FOR OFFICE USE ONLY

DETERMINATION BY LINCOLN COUNTY SOLID WASTE

Signature of Lincoln County Tax Assessor: _____

Approved _____ Denied _____ Date: _____ Comments: _____

(Signature: Lincoln County Manager)

LINCOLN COUNTY-NM
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