

ORDINANCE NO. 2016-02

**AN ORDINANCE REPEALING LINCOLN COUNTY
ORDINANCE 2015-05 AND ENACTING AN ORDINANCE
WHICH REGULATES ACCEPTABLE AND
UNACCEPTABLE WASTE 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 2015-05, 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 Acceptable and Unacceptable waste; 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 Acceptable and Unacceptable 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 Acceptable and Unacceptable 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 Acceptable and Unacceptable waste; and

WHEREAS, the Board of County Commissioners of Lincoln County has determined that Ordinance 2016-02 is applicable in all areas of the County of Lincoln outside municipalities and lawfully created water and sanitation districts; 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:

“Acceptable Waste” means household garbage or trash originating or generated from residential or commercial entities within the boundaries of the County including but not limited to: waste food, swill, carrion, slops, waste from the preparation, cooking and consumption of food and from the handling, storage and sale of food products.

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

“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.

“Construction Debris” means waste materials resulting from construction, remodeling, repair of buildings or roads or other structures, and from demolition of buildings, roads and other structures but does not include any Unacceptable Waste, hazardous, contaminated or regulated waste.

“County” is the County of Lincoln, New Mexico.

“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 National Flood Insurance Program (NFIP) Flood Insurance Rate Map (FIRM).

“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 Acceptable or Unacceptable waste 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.

“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.

“Public area” is any land owned by the community or open to common use such as streets, roads, sidewalks, alleys, arroyos, or other public ways and any and all public parks, spaces, grounds, and buildings.

“Unacceptable Waste” means any waste containing explosive, toxic, radiologic, biologic or pathological substances, waste defined or classified as hazardous waste at any time under federal, state or local law, oil sludge, cesspool or other human waste, human remains, street sweepings, large items of furniture, appliances, metal objects, machinery and equipment such as automobile and vehicular parts, inoperable or partially dismantled motor vehicles, tires trailers, agricultural equipment, marine vessels, or similar items, farm and other large machinery, wire and cable from industrial sources, tree stumps, yard waste or other vegetative matter that normally results from land clearing, the carcasses of animals. liquid waste and slurries, dirt, concrete, chemicals from commercial sources such as cleaning fluids, petroleum products, paints, acids, caustics, pesticides, insecticides, poisons, drugs or other materials the processing of which could pose a threat to health or safety of Waste Plant workers or damage to the Waste Plant.

“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 Waste and Litter; Removal; Penalty.

A. No person shall permit to accumulate upon premises owned, leased, or occupied by him any Acceptable or Unacceptable waste, except in covered water-tight containers made of metal or plastic.

B. No person shall throw, dump, or dispose of any Acceptable or Unacceptable waste, 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 Acceptable or Unacceptable 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 Acceptable or Unacceptable waste, or any composition of residue thereof which is in an unsanitary condition or hazardous to public health.

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

E. It shall be unlawful for any person to deposit any Construction Debris or Unacceptable Waste in any County owned receptacles used for the regular collection of Acceptable waste.

F. No person shall cast, sweep, or deposit anywhere within the County, Acceptable or Unacceptable waste elements upon the road, street, sidewalk, alley, sewer, parkway, or on the ground beside any waste receptacle or other public place within the County. Each person is responsible to ensure that any waste they generate is disposed of in a manner consistent with the provisions of this Ordinance.

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

1. If, upon the basis of such inspections, the Sheriff finds that any of Subsections A- F of this Section have not been complied with or that a violation exists, the Lincoln County Ordinance Administrator shall notify the person in charge of the premises (whether owner, tenant, lessee, manager, or other person), where the unlawful Acceptable or Unacceptable waste 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.

H. Where the Sheriff finds that a clear and present danger exists to the public health, welfare, and safety due to certain unlawful accumulations of Acceptable or Unacceptable waste and immediate measures are required to alleviate this clear and present danger, the ten (10) day notification period may be waived.

I. Costs for correction of unlawful accumulation of Acceptable or Unacceptable waste 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.

J. Nothing in Paragraph G 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.

K. Penalty. Violation of this Section, in addition to any other cost assessed for the cleanup of illegally stored or deposited Acceptable or Unacceptable waste shall be punished under the Provisions of Section 11 of this Ordinance.

Section 3. Acceptable or Unacceptable Waste; Pre-collection Practices.

A. Acceptable waste, if not properly stored on the premises where it is generated, shall be placed and maintained in County containers, the Landfill, or other waste disposal facility(ies) licensed 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 County containers.

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

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

E. Disposal of ashes. It is unlawful to dispose of hot ashes in any manner. To dispose of ash:

1. Cool in place for a minimum of forty-eight (48) hours and inspect to determine that no live embers capable of spontaneous combustion are present; or
2. Extinguish with water or sand and stir to the point where inspection reveals that no embers capable of spontaneous combustion are present.

3. Cold ashes shall be placed in a bag or other enclosed container before being properly disposed of.

Section 4. Waste Containers.

A. Commercial haulers are expressly prohibited from the use of County containers for the disposal of their waste collected on a fee basis. Violations are subject to the penalties provided in Section 11 in this Ordinance.

B. All users of the County 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.

C. All Acceptable waste shall be placed in a container provided by either the County or lawfully approved Sanitation Districts and shall be reduced in waste 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 containers provided by the County.

D. In the event that a waste container provided by either the County or lawfully approved Sanitation Districts is full, Acceptable or Unacceptable waste shall not be placed on the ground or in proximity to the container so as to constitute a health hazard or the possibility that the Acceptable and Unacceptable waste may become blown and scattered.

E. It is unlawful to impede access to a County container other than necessary for the time to remove and deposit Acceptable waste in the receptacle.

Section 5. Damage to Waste Containers.

A. It is prohibited for any person, including children, to be on or in waste containers for any purpose.

B. It is unlawful to intentionally damage any waste 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. Unacceptable Toxic, Hazardous, Ignitable, Flammable, or Explosive Waste.

A. Unacceptable waste, poison, acids, caustics, chemicals, waste contaminated by infectious diseases, radioactive waste, dead animals, live pests, rocks, sand, dirt, concrete, construction debris, 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 County, 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 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 Construction Debris which may be disturbed or removed from the premises by the wind or elements. Within thirty (30) days of completion, all Construction Debris containers shall be removed from the premises.

B. No person generating Acceptable, Unacceptable Waste or Construction Debris shall allow Acceptable, Unacceptable Waste or Construction Debris 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 shall remove the Acceptable, Unacceptable Waste or Construction Debris including structural parts, from the construction site and contain their elements from scattering in the same manner as set out above. Acceptable, Unacceptable Waste or Construction Debris shall be removed and disposed of within five (5) days of completion to an approved waste transfer station or landfill.

Section 8. Scavenging Prohibited.

It is unlawful for any person not authorized by the County to remove, collect, or disturb Acceptable or Unacceptable waste stored in a designated landfill or container. No person shall remove any Acceptable or Unacceptable waste from a container and scatter the same upon any public or private property.

Section 9. Regulations Adopted.

The laws of the State of New Mexico dealing with solid waste management and all regulations promulgated and published pursuant to those laws for the New Mexico Health and Environmental Department or and 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.

Section 10. Waste Landfill Regulations.

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

B. No waste disposal site or facility shall be established or operated, nor shall any person dump, store or otherwise dispose of any Acceptable or Unacceptable 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 waste pit, whichever is more restrictive.

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

D. 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 person who is a homeowner, residential lessee or tenant or agricultural enterprise who disposes of Acceptable waste on the property he owns, rents or leases if the Acceptable waste was generated on that property;
2. a person occupying property who disposes of Acceptable waste generated on the property if the property is located in a place that makes it not feasible to dispose of the Acceptable waste in a permitted waste facility and the disposal of the waste does not harm the environment or endanger the public health or safety and does not violate any provision of the Solid Waste Act or any regulation adopted under that act; or
3. a person in possession of property who disposes on that property Construction Debris or yard waste generated on the property if the disposition of the waste does not violate any provision of the Solid Waste Act or any regulation adopted under that act.

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

F. 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 Acceptable or Unacceptable waste 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. 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 13. 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 14. Repeal of Ordinance No. 2009-03.

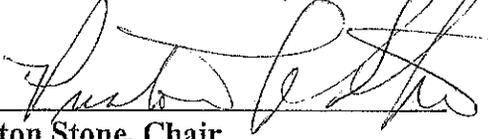
Upon the effective date of this Ordinance, Ordinance No. 2015-05 shall be considered repealed.

Section 15. Effective Date.

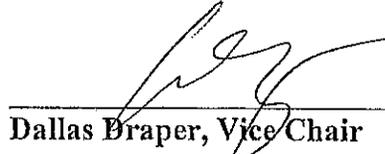
This Ordinance shall take effect thirty days after recording in the Public Records of Lincoln County.

PASSED, APPROVED AND ADOPTED this the 16th day of August, 2016.

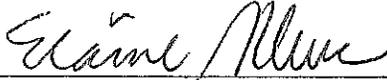
BOARD OF COUNTY COMMISSIONERS
OF LINCOLN COUNTY, NEW MEXICO



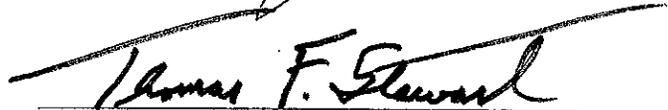
Preston Stone, Chair



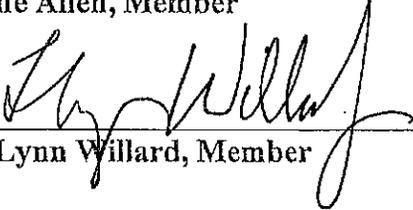
Dallas Braper, Vice Chair



Elaine Allen, Member

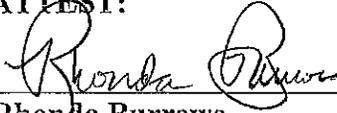


Thomas F. Stewart, Member



Dr. Lynn Willard, Member

ATTEST:



Rhonda Burrows
Lincoln County Clerk

