

ORDINANCE NO. 11

AN ORDINANCE PROHIBITING THE ESTABLISHMENT OR OPERATION OF AUTOMOBILE GRAVEYARDS, JUNKYARDS, OR SCRAP PROCESSING FACILITIES WITHIN ONE THOUSAND FEET (1000') OF THE NEAREST EDGE OF THE RIGHT-OF-WAY OF INTERSTATE, OR STATE PRIMARY HIGHWAY SYSTEM, OR WITHIN THREE HUNDRED FEET (300') OF THE NEAREST EDGE OF THE RIGHT-OF-WAY OF COUNTY PRIMARY ROADS IN EDDY COUNTY, AND REQUIRING SCREENING.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF EDDY COUNTY, EDDY COUNTY, NEW MEXICO:

Section 1. (TITLE AND PURPOSE)

This ordinance shall be known as and shall be cited as "Junkyard Ordinance" the purpose of these regulations is to promote and protect health and the general welfare of Eddy County and protect the inherent values of the area, by encouraging appropriate development and barring use that will impair the best development of Eddy County.

Section 2. (DEFINITIONS)

a) "Automobile Graveyard" means any establishment or place of business which is maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. For the purpose of these rules and regulations any place where three or more junked, wrecked, or non-operating automobiles, vehicles, machines and other similar scrap or salvage, materials are deposited, parked, placed or otherwise located shall be conclusively presumed to be an automobile graveyard.

b) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked dismantled or wrecked automobiles or parts thereof, iron, steel and other old or scrap ferrous or non-ferrous material.

c) "Junkyard" means any establishment or place of business maintained, used or operated for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and it includes garbage dumps and sanitary land fills.

d) "Person" means any individual, firm, agency, company, association, partnership, business trust, joint stock company, political body or corporation.

e) "Scrap Processing Facility" means any establishment having facilities for processing iron, steel, non-ferrous scrap, mineral wastes or slag, and whose principal produce is scrap iron, steel or non-ferrous scrap for sale for remelting purposes only.

f) "Interstate System" means that portion of the national system of interstate and defense highway located within Eddy County as may now or hereafter be officially so designated by the New Mexico State Highway Commission.

g) "Primary System" means that portion of connected main highways located within Eddy County as may now or hereafter be officially so designated by the New Mexico State Highway Commission.

h) "Eddy County Primary Roads" means that portion of connected main roads as may now or hereafter be officially so designated by the Eddy County Commissioners.

i) "Approved Screening" means any plan of camouflage by fence, masonry, vegetation, embankments or other means submitted to the Board of Commissioners of Eddy County and approved by the Board.

Section 3. (SCREENING REQUIRED)

a) The owner or owners of any automobile graveyards, junkyards or scrap processing facilities shall submit to the Board of Eddy County Commissioners a plan drawn to scale indicating how screening is to be accomplished. Such plan shall show the construction details of the screening to be used. When fencing is used alone or in combination with plant material, the result shall provide immediate screening. When planting is used alone or in combination with an earthen embankment the number, type, size and spacing of the plants shall be capable of screening the junk entirely from the view immediately. The ability of the proposed plant material to accomplish this goal shall be judged by the Board of Commissioners. The screening shall be located on the owner's land. The screen shall be in place prior to the time the junk is deposited. At no time after the screen is established, shall the junk be stacked high enough to be visible above the screen. No junk shall be placed outside of the screened areas or in areas not authorized by law. The construction of the fences shall be uniform and no patch-type of construction shall be permitted. Fences shall be painted where the composition is such that painting is required. The paint shall be of such color so as to blend into the environs of the highway right-of-way.

b) (Fencing Materials)

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Subject to the approval of the Board of Commissioners, acceptable fencing shall include fences of steel or other materials, durable wood, such as cypress, redwood or other wood treated with preservatives, or walls of masonry. Some of these types acceptable are chain link type with aluminum steel, plastic, or wooden slat inserts, wooden types of basket weave or other suitable design, walls of masonry, including plain or other ornamental concrete block, block, brick, stone, or other suitable masonry material.

c) (Other types of Screening)

Any design of fencing constructed of any material may be submitted to the Board of Commissioners for consideration. Plant materials indicated on the plans shall specify the botanical name of the plant materials used. The size at the time of the planting, and the spacing between the plants. All plant materials shall be predominantly all green and approved by the Board of Commissioners. Certificates of inspection of plant materials required by federal, state or other authorities, including New Mexico Department of Agricultural License, licenses shall be procured prior to the planting.

d) (Maintenance)

The owner or owners of the junkyard shall maintain the screening established initially, doing such painting and repairs to keep any fences, walls or other structural material in good appearance. Plant materials shall be watered, cultivated or mulched and given any required maintenance including sprinkling, pest control to keep the planting in good health condition. Dead plant material will be removed immediately and shall be replaced during the next spring or fall planting season following the

death.

Section 4. (DISTANCE FROM RIGHT-OF-WAY AND APPROVED SCREENING)

No person shall establish, operate or maintain an automobile graveyard, junkyard, or scrap processing facility within One Thousand Feet (1000') of the nearest edge of the right-of-way of any interstate, or state primary highway system, or within three hundred feet (300') of a county primary road in Eddy County and without approved screening.

Section 5. (PENALTIES)

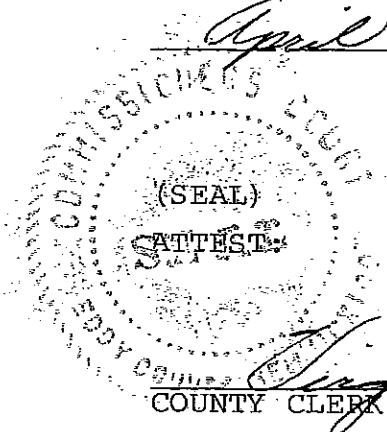
Any Person violating any of the provisions of the Ordinance shall be deemed guilty of a misdemeanor and upon conviction, therefore shall be fined in an amount not exceeding three hundred dollars (\$300.00) or be imprisoned in the County Jail for a period not exceeding ninety days (90 days) or both so fined and imprisoned. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

Section 6. (EXISTING OPERATIONS)

This Ordinance shall affect automobile graveyards, junkyards, and scrap processing facilities established after April 4, 1983; and the expansion of automobile graveyards, junkyards and scrap processing facilities established prior to April 4, 1983.

INTRODUCED, PASSED, ADOPTED AND APPROVED this 4th day of April, 1983.

Robert W. Culhady
CHAIRMAN, BOARD OF COMMISSIONERS



Luzie Cole
COUNTY CLERK

ORDINANCE NO: 12 (Assignment)CONSENT TO ASSIGNMENT OF FRANCHISE

The undersigned Grantor of the franchise described in Ordinance No. 12, and duly recorded in Book 001, page 0077, of the records of ordinances of Eddy County, New Mexico (the "County") hereby consents to the assignment of the rights and obligations of Grantee, also known as Smith Communications Satellite Entertainment Co., a New Mexico general partnership ("Smith"), under such franchise to TCI Cablevision of New Mexico, Inc., a Delaware corporation ("TCICNM"). A copy of the aforementioned franchise ordinance is attached hereto as Exhibit A.

WHEREAS, Smith was granted a franchise to provide cable television service to residents of Eddy County, New Mexico by Ordinance No. 12; and

WHEREAS, Smith wishes to sell its cable television system in Eddy County to TCICNM;

NOW THEREFORE, the County, Smith and TCICNM hereby agree as follows:

1. Smith agrees to transfer and assign all of its interest in the franchise described in Ordinance No. 12 to TCICNM.
2. TCICNM agrees to accept and perform all obligations of Grantee under the franchise arising on and after the sale of the cable television system to TCICNM, and to deliver to the County Attorney copies of the Assignment and Assumption Agreements to be executed by Smith and TCICNM at the Closing of the transaction described herein.
3. In consideration of the foregoing agreement of TCICNM to accept and perform all obligations of the original franchise, the County, through its Board of County Commissioners, hereby consents to the Assignment of the Franchise from Smith to TCICNM.

IN WITNESS WHEREOF, the undersigned has executed this instrument on behalf of Eddy County, New Mexico as of the 10th day of June, 1987.

BOARD OF COUNTY COMMISSIONERS
EDDY COUNTY, NEW MEXICO

By: Bill H. Kirkes
Bill H. Kirkes, Chairman

ATTEST

Ruth King
Ruth King, County Clerk

6/16/87