

ORDINANCE NO. 19

AN ORDINANCE REGULATING AND CONTROLLING THE GROWTH AND REMOVAL OF WEEDS, AND OTHER RANK, NOXIOUS, POISONOUS OR HARMFUL VEGETATION WITHIN THE COUNTY OF EDDY, NEW MEXICO; PROVIDING A LIEN FOR THE CLEARANCE OF SAID WEEDS BY THE COUNTY AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE.

THE FOLLOWING ORDINANCE IS APPROVED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS, COUNTY OF EDDY, STATE OF NEW MEXICO.

SECTION I

SHORT TITLE

This Ordinance shall be known and cited as the "Eddy County Weed Ordinance".

SECTION II

PURPOSE

This Ordinance is intended to promote the general health, safety and welfare of the people of the County of Eddy by prohibiting the maintenance or accumulation of those plants determined to be of major allergenic significance, or which constitute a fire hazard when wind collected, or which otherwise present a hazard or nuisance to inhabitants of the County of Eddy. Furthermore, this Ordinance is intended to promote the growth of native and other grasses and plants whose root structures tend to aid in stabilizing the soil and reducing dust. It is also the intent of this Ordinance that by prohibiting those

methods of plant removal and control which fail to differentiate between harmful and helpful plants and which tend to create the still greater problem of air pollution, the aforementioned purposes will be realized and accomplished.

SECTION III

JURISDICTION

This Ordinance is adopted pursuant to Section 4-37-1, N.M.S.A., and shall govern all specified populated areas within Eddy County, excluding those areas within the boundaries of any incorporated municipality. Except to the extent that such use shall constitute a fire hazard, this Ordinance shall not be construed as restricting or limiting the use of land in Eddy County for agricultural or livestock purposes, or in any other way sufficient to constitute a "taking" by the County. The purpose of this Ordinance is to promote the general health and safety of the inhabitants of Eddy County by limiting or restricting weed growth in more densely populated areas to the extent that such practice constitutes a fire hazard or nuisance.

SECTION IV

DEFINITIONS

For the purpose of this Ordinance the following words and their derivations shall have the meaning given herein:

1. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular, and words used in the singular include the plural number.

2. The word "shall" is always mandatory and not merely directory.

3. "County" means the County of Eddy, State of New Mexico.

4. "County Manager" means the County Manager of the County of Eddy or his authorized representative.

5. "Person" includes one or more persons of either sex, natural persons, corporations, partnerships, associations, joint stock companies, societies and all other entities of any kind capable of being sued.

6. "Lot" shall mean those occupied or unoccupied pieces of land of three acres or less which are located within established or platted subdivisions within Eddy County as on file with the Clerk of Eddy County or as located within three miles of the municipal boundaries of the City of Artesia or the City of Carlsbad, Eddy County, New Mexico.

7. "Tract" shall mean any piece of occupied or unoccupied land with an area of more than three acres which are located within established or platted subdivisions within Eddy County as on file with the Clerk of Eddy County or as located within three

miles of the municipal boundaries of the City of Artesia or the City of Carlsbad.

8. "Owner" shall mean the person who has legal title to a lot or tract or the person who leases or occupies a lot or tract. "Owner" shall also mean any agent, servant, representative or employee of such owner, lessee or occupant.

9. "Nuisance" shall, for the purposes of this Ordinance, mean the growth, maintenance or accumulation of weeds, unhealthful plants or compost in a manner which is deleterious to health, or which otherwise present a physical hazard or irritation to the health, sanitation, safety or welfare of neighboring inhabitants. Vegetation which is maintained or grown for agricultural or livestock purposes shall not be considered as a nuisance, but may be subject to regulation under this Ordinance if maintained in such a manner as to constitute a fire hazard.

10. "Weeds" as used in this Ordinance shall mean all rank, noxious, poisonous, harmful, unhealthful vegetation, any growth whatsoever of an offensive nature or which is deleterious to health, and shall include but not be limited to the following named plants:

- KOCHIA
- LAMBSQUARTER (Kenopodium spp.)
- PIGWEEED (Amaranthus retroflexus)
- RAGWEEDS (Ambrosia spp.)
- RUSSIAN THISTLE (Salsola pestifer)
- TUMBLEWEED

The County Manager is hereby authorized and delegated the authority and duty to determine if any other plants, due to their unhealthy or dangerous attributes or consequences, should be placed on the list of weeds as defined herein and shall put such plants on said list if it appears that such plants do come within the meaning of the term weeds as herein before set out.

SECTION IV

GROWTH OR ACCUMULATION -- LOTS

It shall be unlawful for any owner, having charge or control of any lot within the County to permit or maintain on any such lot, including the area located between the property line and the middle of the alley adjacent to the property, and the area located between the property line and the curb, and the area located 10 feet outside the property line where there is no curb, any growth of weeds to a greater height than twelve (12) inches, or any accumulation of weeds which may constitute a fire hazard or public nuisance.

SECTION V

GROWTH OF ACCUMULATION -- TRACTS

It shall be unlawful for any owner having charge or control of any tract within the County to permit or maintain on any such tract, including the area located between the property line and

the middle of the alley adjacent to the property and the area located between the property line and the curb and the area located 10 feet outside the property line where there is no curb, any accumulation of weeds, which may constitute a fire hazard or public nuisance.

SECTION VI

DUTY OF OWNER

It shall be the duty of the owner to cut the weeds and remove the cuttings or any accumulation of weeds or cause the weeds to be cut and cause the cuttings or any accumulation of weeds to be removed as often as necessary in order to comply with the provisions set out in Sections IV and V of this Ordinance.

SECTION VII

NOTICE TO CUT AND REMOVE

If the provisions of the foregoing sections are not complied with, the County Manager or his authorized representative shall notify the owner to comply with the provisions of this Ordinance. The notification to the owner shall be in writing. In the event the owner of the lot or tract cannot be determined or the owner shall be a nonresident of the County, such notice may be served by posting a copy of the written notice upon the premises.

SECTION VIIIWHEN COUNTY TO REMOVE

In those cases where the owner is a nonresident of the County or cannot be determined and compliance with the notice has not occurred within 10 days, the County Manager shall cause such weeds to be cut and the cuttings or any accumulation of weeds removed. If the owner is notified and fails to comply with the provisions of this ordinance within 10 days, the County Manager may cause such weeds to be cut and the cuttings or any accumulation of weeds removed. In any event, should it appear to be a matter of public necessity for healthy or safety reasons, the County Manager may give notice that the weeds must be cut or removed immediately, in which event should there be noncompliance the County Manager is authorized to cause such weeds to be cut and the cuttings or any accumulation of weeds removed immediately, and bill the owner for all costs thereto. The actual cost of the cutting or removal of weeds plus any other penalties or costs allowed by law in connection therewith, shall, in the manner prescribed by law, become a lien upon the property from which such weeds were removed.

SECTION IXMETHOD OF REMOVAL

The approved methods of controlling weeds shall be mowing, cutting, digging or other methods designed to remove the weeds but not disturb other vegetation or unnecessarily disturb the soil. The scraping and tillage of lots and tracts of land is prohibited unless permission of the County Manager is first obtained; except, that scraping and tillage as part of normal construction activities or as ground preparation for agriculture or landscaping activities shall be allowed. The County Manager shall allow scraping and tillage of lots or tracts of land when this will not detract from or violate the clear intent and purpose of this Ordinance.

SECTION XPENALTY

Any person who shall fail or neglect to cut the weeds and remove the cuttings or any accumulation of weeds as provided in this Ordinance or who shall violate any of the provisions of this Ordinance whatsoever or who shall resist or obstruct the County Manager or his authorized representatives in the cutting of weeds or removal of cuttings or the removal of the accumulation of the weeds shall, upon conviction thereof, be subject to a fine of not more than \$300.00 or imprisonment for not more than 90 days or

both; and each day on which such violation continues shall constitute a separate offense. These penalties shall be in addition to payment of any County costs for removal.

SECTION XI

SUPERCEDING CLAUSE

Any County Ordinance or part of Ordinance which is in conflict with the provisions of this Ordinance is hereby superceded to the extent that this Ordinance provides more specific standards or stricter standards of compliance.

SECTION XII

INDEPENDENCY OF PROVISIONS

If any of the sections, subsections, sentences, clauses or phrases of this Ordinance are for any reason held to be unconstitutional or invalid, the validity of the remaining portions of the Ordinance shall not thereby be affected since it is the expressed intent of the Board of County Commissioners to pass each section, phrase, paragraph and word separately.

ADOPTION OF ORDINANCE NO. 19

On the 6th day of August 1991, a public hearing was held by the Board of Eddy County Commissioners to consider the passage of Ordinance No. 19, the "Ordinance Regulating And Controlling Growth And Removal Of Weeds". All parties and interested citizens having had an opportunity to be heard. Notice of the date, time and place of the hearing as well as an outline of the proposed Ordinance having been published in the Carlsbad Current Argus and The Artesia Daily Press, newspapers of general circulation published daily in Eddy County, New Mexico, at least two weeks prior to the date of hearing.

Following the aforesaid hearing, on the 6th day of August 1991, after due consideration of the results and comments heard during the public hearing, Ordinance No. 19 was adopted.

NOW, THEREFORE, BE IT RESOLVED that the Eddy County Ordinance Regulating And Controlling Growth And Removal of Weeds, consisting of 9 pages is adopted to govern and regulate growth and removal of seeds and harmful vegetation in Eddy County, according to the provisions of said Ordinance, effective 30 days after its filing with the County Clerk as signed by the Board of Commissioners. Notice of this Ordinance shall be provided by publication in the Carlsbad Current Argus and Artesia Daily Press.

PASSED AND ADOPTED this 6th day of August 1991, by the Eddy County Board of Commissioners in an open hearing in Carlsbad, Eddy County, New Mexico.

EDDY COUNTY BOARD OF COMMISSIONERS

NOT PRESENT
Jay Mobley, Chairman

W. Alsop
Bill Alsop, Member

Nancy Brantley
Nancy Brantley, Member

Fred Alvarez
Fred Alvarez, Member

Julius Doubrava
Julius Doubrava, Member

ATTEST:

Karen Davis
Karen Davis, County Clerk

