

ORDINANCE NO. 18

AN ORDINANCE PROHIBITING THE MAINTENANCE OR IMPROPER STORAGE OF JUNKED OR ABANDONED MOTOR VEHICLES, PARTS, APPLIANCES, BUILDING MATERIAL OR RUBBISH, OR OTHER JUNK, REFUSE, GARBAGE, ETC.; FURTHER PROHIBITING THE MAINTENANCE OF DILAPIDATED OR HAZARDOUS STRUCTURES OR OTHER SUCH NUISANCES; AND PROVIDING FOR THE INSPECTION, REMOVAL, NOTICE, COST OF REMOVAL, LIENS UPON PROPERTY, AND IMPOSING PENALTIES NECESSARY FOR ENFORCEMENT OF SAME.

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 Junk and Dilapidated Structures Ordinance".

SECTION II

PURPOSE

WHEREAS, the County of Eddy has previously adopted a "Junkyard Ordinance", Ordinance No. 11, to prohibit the establishment or operation of automobile graveyards, junkyards or scrap processing facilities, and requiring screening and proper storage of automobiles, scrap and other junk maintained or stored on any property in Eddy County. Despite the penalties provided for violation of said "Junkyard Ordinance", abandoned vehicles, parts, and scrap metal continue to present an attractive nuisance and health hazard throughout the County. Further, cooperative efforts by the County municipalities and Eddy County to provide voluntary cleanup of these potentially life threatening safety

hazards has reduced but failed to resolve the continued dangerous storage and maintenance of non-operative vehicles, parts, and other scrap metal. There is, therefore, a need to supplement the existing "Junkyard Ordinance", Ordinance No. 11, with further regulatory controls and remedies.

AND WHEREAS, further investigation of buildings, structures, and surrounding property throughout the County has indicated the existence of dilapidated and substandard buildings and structures, open storage of abandoned iceboxes, refrigerators, and other large appliances, open storage of building material and rubbish, and other abandoned items, including dead trees, tires, trash, paper products, garbage, broken glass, etc.; all of which present a public nuisance, and constitute a health and sanitation risk, attractive nuisance to children unaware of the dangers and hazards incident to these abandoned items, safety hazard to the public as a whole and city and county officials called upon to enter such property, fire hazard and environmental risk which may threaten the natural resources of this County. In addition, these improper uses of property reduce the inherent value of surrounding property and deter appropriate development of industry and housing throughout Eddy County. There is, therefore, a need for regulation and controls to provide for the safety, preserve the health and promote the prosperity, comfort and convenience to County inhabitants and visitors alike.

SECTION IIIJURISDICTION

This Ordinance is adopted pursuant to Section 4-37-1, N.M.S.A., and shall govern all areas within Eddy County, excluding those areas within the boundaries of any incorporated municipality. Except, if the area in question lies within the jurisdiction of an extraterritorial commission appointed by the County and one of its municipalities, then the more stringent regulations, albeit this County Ordinance or the Zoning Regulations of the extraterritorial commission, will apply to any conflict alleged to exist.

SECTION IVPREVIOUS ORDINANCES, RESOLUTIONS, REGULATIONS OR POLICIES;INDEPENDENCY OF PROVISIONS

As indicated, the County has previously adopted Ordinance No. 11, "Junkyard Ordinance", and said Ordinance is not intended to be rescinded by adoption of this Ordinance. It is the express intent of this Ordinance to supplement those regulations and remedies provided in the "Junkyard Ordinance". However, any previous Ordinances, Resolutions, Rules, Regulations or Policies are superseded by the specific terms of this Ordinance to the extent that this Ordinance provides more specific and strict standards of compliance. Should any section, subsection, paragraph, sentence, or part herein be declared unconstitutional, invalid, or in contradiction to state or federal statute and regulation, the same shall not invalidate any other part or

portion of this Ordinance, it being the intent of the Board of County Commissioners to enact each section, subsection, paragraph, sentence and part hereof independently of every other part.

SECTION V

ADMINISTRATION OF ORDINANCE

Administration of this Ordinance shall be accomplished under the authority of the County Manager, Code Enforcement Officer or their delegated representative, who shall be assisted by county law enforcement officers when necessary. The County Manager or Code Enforcement Officer or their delegated representative shall have authority to enter upon any property for the purpose of inspection to ensure compliance with this Ordinance. The County Manager and Code Enforcement Officer shall develop and propose such additional rules and regulations or procedures as they deem necessary or desirable to carry out the provisions and purposes of this Ordinance. Upon approval of the Board of County Commissioners, it shall be the responsibility of the County Manger, Code Enforcement Officer, or their delegated representative to administer and enforce this Ordinance and all regulations adopted hereunder.

SECTION VI

DEFINITIONS

For the purposes of this Ordinance, certain terms, phrases, words and their derivatives shall be construed as set forth either in this Ordinance, as specified in regulations adopted

under this Ordinance, as previously specified in Eddy County Ordinance No. 11, "Junkyard Ordinance", as specified and set forth by the Uniform Housing Code, or as specified or defined by state or federal statute or regulation, including but not limited to those regulations of the Environmental Improvement Division (EID). For purposes of enforcement of this Ordinance any reference made within these Codes, Statutes or Regulations, referring to an official responsible for enforcement of same shall be construed as a reference to the County Manager, Code Enforcement Officer or their delegated representative. Additionally, the following words and their derivatives shall have the meaning as provided below:

- (1) Where terms are not defined by any of the above means, they shall have their ordinary accepted meanings within the context with which they are used. Webster's Third International Dictionary of the English Language, Unabridged, copyright 1981 and Black's Law Dictionary, Fifth Addition shall be considered as providing ordinary accepted meanings. Words in the singular include the plural, and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.
- (2) "County" means the County of Eddy, State of New Mexico.
- (3) "County Manager" and "Code Enforcement Officer" means the County Manager of the County of Eddy or the Code Enforcement Officer of the County of Eddy or their authorized representatives.
- (4) "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.
- (5) "Owner" shall mean the person who has legal title to a lot or tract or a person who leases a lot or tract. "Owner" shall also mean any agent, servant,

"Owner" shall also mean any agent, servant, representative or employee of such owner, lessee or occupant.

- (6) "Vehicle" means a machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners, or slides, and transport persons or property or pull machinery, and shall include without limitation, automobiles, trucks, trailers, motorcycles, three wheelers, four wheelers, recreational vehicles, tractors, wagons, etc.

SECTION VII

STORAGE OF NON-OPERATING OR JUNKED VEHICLES

It shall be unlawful for any person in charge or control of any property within the County, whether as owner, tenant, occupant, lessee or otherwise, to allow any partially dismantled, non-operating, wrecked, junked or discarded vehicle to remain on such property for a period exceeding 120 hours, except as otherwise qualified below; and no person shall leave any such vehicle on any county road, highway, right-of-way, or other public property for a period exceeding 48 hours. Except as otherwise provided herein for health or safety reasons, this restriction shall not apply with regard to a vehicle which is in an enclosed building or otherwise screened from public view, or a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by any public authority, or to automobile junkyards or scrap processing facilities operating in compliance with County Ordinance No. 11, "Junkyard Ordinance".

SECTION VIIIDANGEROUS BUILDINGS, STRUCTURES, DEBRIS, RUBBISH,JUNKED APPLIANCES, ETC.

Pursuant to Section 4-37-1 NMSA, which grants Counties the same powers as those afforded to municipalities for the protection of the safety, health and prosperity of county inhabitants; and Section 3-18-5 NMSA which allows governing bodies to require the removal of dangerous or unsanitary buildings, structures, debris, rubbish, junked appliances, and other menaces to public comfort, health, peace or safety; all property in the County maintained in a manner inconsistent with the Uniform Housing Code or Environmental Improvement Division Regulations shall be deemed a menace to public comfort, health, peace or safety and shall be immediately removed by the person in charge or control of the property, whether owner, tenant, occupant, lessee or otherwise.

SECTION IXRESOLUTION FOR REMOVAL; NOTICE;RIGHT OF COUNTY TO REMOVE; LIEN

It shall be unlawful for any person to maintain buildings or structures on his property or store debris, rubbish, automobile parts, tires, trash, dead trees, garbage or other material in a manner inconsistent with the Uniform Housing Code, or Environmental Improvement Division regulations, or as would otherwise be a menace to public comfort, health, peace or safety. In addition to penalties provided for violation of this

Ordinance, whenever any building or structure is ruined, damaged, and dilapidated, or any premise is covered with junk, rubbish, wreckage or debris, the Board of County Commissioners may further by resolution find that the ruined, damaged and dilapidated building, structure or premise is a public nuisance and a menace to the public comfort, health, peace or safety, and require the immediate removal of such offending building, structure, ruins, rubbish, wreckage or debris.

A copy of the resolution shall be served on the owner, occupant or agent in charge of the building, structure or premise. If the owner, as shown by the real estate records of the county clerk, occupant or agent in charge of the building, structure or premise cannot be served within the county, a copy of the resolution shall be posted on the building, structure or premise and a copy of the resolution shall be published one time. Within ten days of the receipt of a copy of the resolution or of the posting and publishing of the resolution, the owner, occupant or agent in charge of the building, structure or premise shall commence removing the building, structure, ruin, rubbish, wreckage or debris, or file a written objection with the County Manager asking for a hearing before the governing body of the County.

If a written objection is filed as required in this section, the County Commissioners shall:

(1) fix a date for a hearing on its resolution and the objection;

(2) consider all evidence for and against the removal resolution at the hearing; and

(3) determine if its resolution should be enforced or rescinded.

Any person aggrieved by the determination of the County Commissioners may appeal to the district court by:

(1) giving notice of appeal to the County Commissioners within five days after the determination made by the Commission; and

(2) filing a petition in the district court within twenty days after the determination made by the Commission. The district court shall hear the matter de novo and enter judgment in accordance with its findings.

If the owner, occupant or agent in charge of the building, structure or premise fails to commence removing the building, structure, ruins, rubbish, wreckage or debris:

(1) within ten day of being served a copy of the resolution or of the posting and publishing of the resolution; or

(2) within five days of the determination by the governing body that the resolution shall be enforced; or

(3) after the district court enters judgment sustaining the determination of the governing body, the County may remove the building, structure, ruins, rubbish, wreckage or debris at the cost and expense of the owner. The

reasonable cost of the removal shall constitute a lien against the building, structure, ruin, rubbish, wreckage or debris so removed and against the lot or parcel of land from which it was removed. The lien shall be foreclosed in the manner as provided by state statute.

The county may pay for the costs of removal of any condemned building, structure, wreckage, rubbish or debris by granting to the person removing such materials the legal title to all salvageable materials in lieu of all other compensation. Any person or firm removing any condemned building, structure, wreckage, rubbish or debris shall leave the premises from which the material has been removed in a clean, level and safe condition, suitable for further occupancy or construction and with all excavations filled.

SECTION X

COMPLIANCE WITH STATE STATUTES, EID REGULATIONS,

AND LOCAL ORDINANCES IN REMOVAL

Every owner, tenant, occupant, lessee or other person removing buildings, structures, rubbish, debris, trash, garbage, etc., shall comply with state statutes, local ordinances, and Environmental Improvement Division Regulations in accomplishing said removal. No person shall dump, bury, or otherwise dispose of such refuse other than in an approved area and manner as require for solid waste disposal.

SECTION XIIMMEDIATE REMOVAL FOR PUBLIC NECESSITY

Notwithstanding any provision of this Ordinance to the contrary, should it ever appear to be a matter of public necessity for health or safety reasons, the County Manager or Code Enforcement Officer may require immediate removal or abatement of such structures, non-operative or abandoned vehicles, rubbish or waste, that impose an immediate health or safety risk to the public. Where the owner, tenant, occupant, lessee or other person in control of the property cannot be immediately notified, or cannot or does not immediately remove or abate the public menace as requested, the County Manager or Code Enforcement Officer shall be authorized to cause such removal or otherwise abate the public threat, and bill the owner for all costs thereto. The actual cost of removal or abatement, together with 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 the structure or waste was abated or removed.

SECTION XIIPENALTY

Any person who shall violate any of the provisions of this Ordinance whatsoever or who shall resist or obstruct the County Manager, the Code Enforcement Officer or their authorized representative in the abatement or removal of offending property 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; each day on which such violation continues shall constitute a separate offense. These penalties shall be cumulative and in addition to payment of any county costs for removal.

ADOPTION OF ORDINANCE NO. 18

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. 18, the "Ordinance Regulating The Removal Of Junk And Dilapidated Structures". 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 a general summary of the subject matter of the proposed Ordinance having been published in the Carlsbad Current Argus and Artesia Daily Press, two newspapers of general circulation published daily in Eddy County, New Mexico, at least two weeks prior to the date of the public 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. 18 was adopted.

NOW, THEREFORE, BE IT RESOLVED that the Eddy County Ordinance Regulating The Removal Of Junk and Dilapidated Structures, consisting of 12 pages is adopted to govern and regulate control of junk and unsuitable structures 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

Bill 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

