

**EL PASO COUNTY
STATE OF COLORADO
ORDINANCE NO. 92-1**

**PROHIBITING THE ACCUMULATION OF RUBBISH
(AS AMENDED)**

WHEREAS, pursuant to Section 30-15-401, C.R.S., the Board of County Commissioners of El Paso County, Colorado (hereinafter the "Board"), has the general enabling power to adopt ordinances for the control or licensing of those matters of purely local concern, and to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease; and

WHEREAS, Section 30-15-401(l)(a)(I), C.R.S., specifically authorizes the adoption of ordinances and regulations to compel the removal of rubbish within the unincorporated areas of El Paso County; and

WHEREAS, the Board has previously enacted Ordinance 89-1, prohibiting the accumulation of rubbish; and

WHEREAS, Section 30-15-401(l)(a)(I), C.R.S., was modified in 1992 by H.B. 1156, which specifically authorized the courts to issue administrative entry & seizure warrants in order that counties may perform by their own forces the removal of rubbish from private property; and

WHEREAS, Resolution 96-430, General 121, adopted by the Board on December 9, 1996, amends Section 7.2 of this Ordinance 92-1 as originally enacted on October 2, 1992, thereby addressing the need to expand the breadth of notice requirements herein; and,

WHEREAS, residents of El Paso County continue to experience problems with the accumulation of rubbish upon adjacent or nearby properties; and

WHEREAS, it is the opinion of the Board that in order to preserve the public health, safety and welfare of the citizens of El Paso County, the Board should take the following action.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of El Paso County, Colorado:

Section 1: Purpose.

The purpose of this Ordinance is to protect the public health, safety and welfare of the citizens and residents of El Paso County, Colorado, by eliminating and controlling, to the extent possible, the accumulation of rubbish within the County, which if not eliminated or controlled, can result in visual blight; "attractive nuisances"; incompatibility with existing land uses; hazardous or toxic substances being deposited in unapproved sites; attraction of disease-infested rodents and other vermin; air, noise and water pollution; and fire and other hazards.

Section 2: Authority/Effect

2.1 This Ordinance is authorized pursuant to, inter alia, part 1 of article 11 of title 30, part 4 of article 15 of title 30, and part 1 of article 20 of title 29, C.R.S.

2.2 Ordinance 89-1, enacted July 13, 1989, is hereby repealed and replaced in whole by this Ordinance.

Section 3: Applicability.

3.1 This Ordinance shall apply throughout the unincorporated area of El Paso County including public and state lands.

3.2 This Ordinance shall apply within the corporate limits of any incorporated town or city within El Paso County which elects by appropriate ordinance or resolution to have the provisions of this Ordinance apply therein, and upon which an intergovernmental agreement between El Paso County and such incorporated town or city has been entered into relating thereto.

Section 4: Definitions

Agricultural Land: any parcel of land, presently and for at least two (2) years prior to any alleged violation of this Ordinance, that has been continually used for the primary purpose of obtaining monetary profit as a farm or ranch or forest land, as defined and subject to the restrictions contained in Section 39-1-102(1.6), C.R.S.

Board: The Board of County Commissioners of El Paso County, Colorado.

County: the unincorporated areas of El Paso County, including public and state lands, and the corporate limits of any incorporated town or city within El Paso County which elects by appropriate ordinance or resolution to have the provisions of this Ordinance apply therein and upon which an intergovernmental agreement between El Paso County and such incorporated town or city has been entered into relating thereto.

Industrial Tract: a lot, parcel or tract of land currently zoned for industrial uses or otherwise authorized by variance or nonconforming use status to operate activities ordinarily restricted to industrial zone districts, or, if unzoned, classified by the El Paso County Assessor's Office as industrial.

Owner: the owner of record, whether person, partnership, firm, corporation, governmental agency, or other association of persons, any authorized agent or representative of the owner of record, and any occupant of the premises.

Rubbish: any trash, junk, garbage, litter, refuse, debris, outside storage of used tires (except as otherwise regulated pursuant to the Solid Wastes Disposal Sites and Facilities Act, part I of article 20 of title 30, C.R.S., and any rules and regulations promulgated thereunder), lawn or

garden waste, newspapers, magazines, glass, metal, plastic or paper containers or packaging, remnant construction or demolition materials, vehicle parts, abandoned or junk vehicles, equipment or mobile homes, used appliances or furniture, oil, carcasses of dead animals, any nauseating or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, or anything else of an unsightly nature, or any other object which has been discarded or abandoned.

Section 5: Exemptions.

This Ordinance shall not apply to industrial tracts of ten (10) or more acres nor to agricultural land, as such terms are defined in this Ordinance.

Section 6: Unlawful Acts.

6.1 It shall be unlawful for any owner to allow the accumulation of rubbish on any lot or tract of land in the County under such owner's control, possession, or ownership, or upon any alley or sidewalk adjacent to such lot or tract of land.

6.2 It shall be unlawful for any person to dump or dispose of rubbish in the County except in those places permitted and/or duly authorized by the Board for such purpose.

6.3 It shall be unlawful for any person to fail or refuse to comply with any order issued pursuant to this Ordinance.

Section 7: Notice and Order for Removal of Rubbish.

7.1 In the event that rubbish should accumulate on any lot or tract of land in the County, or upon any alley or sidewalk adjacent to such lot or tract of land, such matter may be placed on the agenda for consideration at a regular meeting of the Board. In the event the Board determines that such unlawful condition does exist, it shall direct the issuance of a Notice and Order to the owner requiring the owner either to remove such rubbish within twenty (20) days from the date of said Notice and Order or to appear before the Board within said twenty (20) days to show cause why said Order should not be enforced.

7.2 Said Notice and Order shall be deemed issued by placing the same in the U.S. mails, certified, return receipt requested, to the owner's last known address as indicated on the County's assessment roll. Receipt of the Notice and Order shall be established by the signature of the receiving party upon the return receipt or a copy of the Notice and Order. In the event the owner shall fail or refuse to accept the certified letter, the El Paso County Sheriff's Office shall have authority to serve the Notice and Order upon the owner in the same manner as provided in Rule 4 of the Colorado Rules of Civil Procedure. Alternatively, and in lieu of personal service, should the owner fail or refuse to accept the certified letter, the Notice and Order may be published in such a manner as is in accord with Rule 4 of the Colorado Rules of Civil Procedure concerning publication, except that said publication shall be for a period of ten days and includes the Notice and Order being posted in a conspicuous place at or on the subject property.

Section 8: Show Cause Hearing

If within the twenty (20) days of the date of the Notice and Order issued under Section 7 above or prior to the Board authorization to remove the rubbish as provided in Section 9 below, the owner may request and shall be granted a show cause hearing, before the Board. No less than three (3) days prior to the date of the show cause hearing, notice of the date and place of the hearing shall be placed in the U.S. mails, first class, to the owner and any other party who has expressed an interest in this matter. The owner shall have a full and fair opportunity to present any relevant evidence or witnesses to the Board in order to establish why the Notice and Order should not be enforced or delayed in its enforcement. Any other interested party shall have the same opportunity to present evidence or witnesses. The Board shall consider all such evidence and testimony, along with any presentation made by County staff or other governmental agency, in reaching its decision in accordance with this Ordinance.

Section 9: Removal of Rubbish By County; Assessment of Costs; Collection.

9.1 If the owner fails or refuses to remove such rubbish within twenty (20) days from the date of the Notice and Order issued in accordance with Section 7 above or fails to change the decision of the Board in a show cause hearing in accordance with Section 8 above, the Board shall have the authority to remove such rubbish, either by and through County forces, contract, or otherwise. If the owner fails to pay the costs of removal within five (5) days of removal, the whole cost thereof, including five (5) percent for inspection and incidental costs in connection therewith, may be assessed upon the lots and tracts from which such rubbish has been removed. Any assessment pursuant to this subsection 9.1 shall be a lien against such lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments.

9.2 In case the assessment prescribed in subsection 9.1 above is not paid within ninety (90) days from the date of removal of such rubbish by El Paso County, such assessment may be certified to the El Paso County Treasurer who shall collect such assessment, together with a ten (10) percent penalty for the cost of collection in the same manner as other taxes are collected. The laws of the State of Colorado for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall govern and apply to the collection of assessments pursuant to this subsection 9.2.

Section 10: Emergency Order.

10.1 Whenever the Board deems that an emergency exists which requires immediate action to protect the public health, safety and welfare, the Board may, without prior notice or hearing, issue an Order stating that such emergency exists and requiring that such action be taken as deemed necessary to meet the emergency. Notwithstanding any provision of this Ordinance to the contrary, such Order shall be effective immediately.

10.2 Any person to whom such emergency Order is issued shall comply therewith immediately, and it shall be unlawful to fail or refuse to so comply.

10.3 In the event that the person to whom such emergency Order is issued fails or refuses to immediately comply therewith, the Board may, without prior notice to the owner, occupant or agent of the owner, provide through County forces, contract, or otherwise, to remove, correct or otherwise abate the condition giving rise to the issuance of the emergency Order, and to assess and collect the whole cost thereof to the owner of the affected property in accordance with Section 9 above.

Section 11: Enforcement.

11.1 The above prescribed sections of this Ordinance shall be administered and enforced by the El Paso County Planning Department through its Code Enforcement Section.

11.2 The Board hereby designates the County Attorney, or his/her designee, as the County's legal representative in the enforcement of the provisions of this Ordinance in any court of applicable jurisdiction. In the event the County Attorney or his/her designee cannot represent El Paso County or the Board deems it otherwise appropriate, the Board may appoint the District Attorney of the 4th Judicial District to perform such legal enforcement duties in lieu of the County Attorney.

Section 12: Administrative Entry & Seizure Warrant.

12.1 No entry upon private property for the purpose of rubbish removal shall be made until an administrative entry and seizure warrant has been obtained from a court of competent jurisdiction.

12.2 A sworn or affirmed affidavit shall be prepared and submitted along with supporting documents or pictures to the court. Said documents shall include a copy of this Ordinance, a copy of the Notice and Order issued to the owner, a copy of the signed return receipt on the certified mail or other proof of service, and a copy of the Board resolution directing the removal of the rubbish. Said affidavit shall establish the factual information necessary for the issuance of a warrant, including a reasonably specific description of the location of the property, a general list or site plan describing the rubbish to be removed from the property, and the method of disposal or temporary impoundment of such rubbish, whichever the court deems appropriate.

12.3 Within ten (10) days following the date of issuance of an administrative entry and seizure warrant, the warrant shall be fully executed in accordance with the directions of the issuing court; a copy of the issued warrant shall be provided or mailed, first class, to the owner; and proof of execution of the warrant, including a written inventory of any property impounded, shall be submitted to the issuing court.

Section 13: Impoundment.

13.1 Impoundment of removed rubbish shall occur any time so ordered by the court.

13.2 Ordinarily, any material or equipment having salvage or reuse value should be removed to an impound lot, either owned by the County or privately owned and subject to a contract with the County.

13.3 Upon impoundment, notice shall be sent by U.S. mail, first class, to the owner with information as to the impoundment location, the person to contact for reclaiming the property, and the conditions and time limits for retrieving impounded items as provided in subsection 13.4 below.

13.4 Impoundment shall be for a period not to exceed ninety (90) days, whereupon the impounded items shall be regarded as abandoned and may be disposed of by the County as it sees fit. If the owner of the impounded items seeks to reclaim them within the 90-day period, the impounded items shall be released upon the occurrence of all of the following: All of the impounded items owned by the owner are removed from the impound lot; satisfactory evidence is provided that the owner will move the items to a site that will not result in a violation of this Ordinance or the County's Zoning Regulations; the County has verified that the property from which the impounded items were removed has remained in compliance with the Rubbish Ordinance; and all costs assessable under this Ordinance, including storage costs, have been paid in full, by cash, money order or cashier's check.

Section 14: Criminal Prosecution.

14.1 If so directed by the Board, a criminal prosecution may be brought against the owner in accordance with Sections 30-15-402 and -410, C.R.S.

14.2 Each day that such rubbish continues unremoved from the premises after the date of expiration of the twenty (20) day period prescribed in Section 7 hereinabove shall constitute a separate violation.

14.3 Violation of the provisions of this Ordinance shall be punishable by a fine of not more than three hundred dollars (\$300) for each violation.

14.4 All fines and forfeitures for the violation of this Ordinance shall be paid to the Treasurer of El Paso County within thirty (30) days of receipt and shall be deposited into the General Fund of the County.

Section 15: Additional Remedies.

The remedies provided in this Ordinance shall be cumulative and in addition to any other remedies which may be available to the County and its Board. Nothing contained herein shall be construed to preclude the Board from seeking such other remedies in addition to, or in lieu of, the remedies herein granted.

Section 16: Safety Clause.

The Board hereby finds, determines and declares that this Ordinance is necessary for the health, safety and welfare of the citizens of El Paso County, Colorado:

Section 17: Severability Clause.

If any section, subsection, clause or phrase of this Ordinance is, for any reason, held to be invalid, such holding shall not effect the validity of the remaining portions of this Ordinance.

Section 18: Publication and Effective Date.

The foregoing text is the authentic text of El Paso County Ordinance No. 92- 1. The first reading of said Ordinance took place on August 3, 1992. It was published in full in the El Paso County Advertiser and News on August 12, 1992.

It was adopted, without amendment, on August 31, 1992, and is to be republished by title in the El Paso County Advertiser and News on September 2, 1992, and shall take effect October 2, 1992.

DONE AND SIGNED this 31st day of August, 1992, at Colorado Springs, Colorado

SECOND READING

INTRODUCED, READ AND ADOPTED ON SECOND READING on December 30, 1996,--and-,ordered published in the El Paso County News.

CERTIFICATE OF PUBLICATION AND ADOPTION

I hereby certify that the foregoing proposed Resolution to Adopt Amendments to Ordinance No 92-1 was introduced, read and adopted on first reading at the regular meeting of the Board of County Commissioners of the County of El Paso on December 9, 1996, and the same was published in full in the El Paso County News, on December 11, 1996, and thereafter was adopted on second and final reading at a regular meeting of the Board of County Commissioners of the County of El Paso on December 30, 1996. Said amended ordinance was published by reference to title only on January 1, 1997, in the El Paso County News

Commissioner Bremer moved adoption of the following Resolution:

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY,
STATE OF COLORADO

Resolution No.- 96-430. General-121

**A Resolution to Adopt Amendments to Ordinance No. 92-1:
PROHIBITING THE ACCUMULATION OF RUBBISH**

WHEREAS, section 30-15-401 (1)(a)(1), C.R.S., authorizes the adoption of ordinances and regulations to compel the removal of rubbish within the unincorporated areas of El Paso County; and

WHEREAS, the Board of County Commissioners adopted on second and final reading Ordinance No. 92-1, an Ordinance compelling the removal of rubbish within the unincorporated areas of El Paso County on August 31, 1992. Ordinance No. 92-1 was duly recorded in Book 6036 at page 1397; and

WHEREAS, it is necessary that amendments be made to Ordinance No. 92-1 to clarify that the County may use all methods of service available under the law.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of El Paso County, Colorado, in accordance with the above recitals, and having reviewed the proposed amendments set forth herein hereby adopts and incorporates said amendments to Ordinance No. 92-1 as follows:

Section 7.2 Said Notice and order shall be deemed issued by placing the same in the U.S. mails, certified, return receipt requested, to the owner's last known address as indicated on the County's assessment roll. RECEIPT OF THE NOTICE AND ORDER SHALL BE ESTABLISHED BY THE SIGNATURE OF THE RECEIVING PARTY UPON THE RETURN RECEIPT OR A COPY OF THE NOTICE. In the event the owner shall fail or refuse to accept the certified letter, the El Paso County Sheriff's Office shall have authority to serve the Notice and order upon the owner in the same manner as provided in Rule 4 of the Colorado Rules of Civil Procedure. ~~Receipt of the Notice and Order shall be established by the signature of the receiving party upon the return receipt or a copy of the Notice and Order.~~ ALTERNATIVELY, AND IN LIEU OF PERSONAL SERVICE, SHOULD THE OWNER FAIL OR REFUSE TO ACCEPT THE CERTIFIED LETTER, THE NOTICE AND ORDER MAY BE PUBLISHED IN SUCH A MANNER AS IS IN ACCORD WITH RULE 4 OF THE COLORADO RULES OF CIVIL PROCEDURE CONCERNING PUBLICATION, EXCEPT THAT SAID PUBLICATION SHALL BE FOR A PERIOD OF TEN DAYS AND INCLUDES THE NOTICE AND ORDER BEING POSTED IN A CONSPICUOUS PLACE AT OR ON THE SUBJECT PROPERTY.

BE IT FURTHER RESOLVED, that the Board of County Commissioners determines that the adoption of these amendments is in the best interest of the public health, safety, and welfare of the citizens of El Paso County; and

BE IT FURTHER RESOLVED, that said Amendments are incorporated and made apart of Ordinance No. 92-1 and shall be effective 30 days after publication of these Amendments.

DONE THIS 9th day of December 1996, at Colorado Springs, Colorado.

Commissioner Howells seconded the adoption of the foregoing Resolution. The roll having been called, all five Commissioners voted "aye," and the Resolution was unanimously adopted by the Board of County Commissioners of the County of El Paso, State of Colorado.