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RESOLUTION NO. 17- 320

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

**RESOLUTION ADOPTING ORDINANCE NO. 18-02, PROHIBITING THE
ACCUMULATION OF RUBBISH**

WHEREAS, pursuant to C.R.S. § 30-15-401, the Board of County Commissioners of El Paso County, Colorado (hereinafter "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, C.R.S. § 30-15-401(1)(a)(I)(A) specifically authorizes the adoption of ordinances and regulations to compel the removal of rubbish from lots and tracts of land within the unincorporated areas of El Paso County; and

WHEREAS, the Board has identified a need to amend the previously enacted ordinance, Ordinance No. 06-02, to provide more efficient, effective, and consistent enforcement; and

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

WHEREAS, pursuant to C.R.S. § 30-15-406, the proposed ordinance attached hereto as Exhibit A, was introduced and read before the Board of County Commissioners in a First Reading on October 24, 2017, and published in full in the El Paso County Advertiser and News/Fountain Valley News on November 1, 2017, at least ten days prior to adoption; and

WHEREAS, in order to preserve the public health, safety and welfare of the citizens of El Paso County, the Board desires to repeal and replace Ordinance No. 06-02, and wishes to adopt Ordinance No. 18-02.

NOW, THEREFORE, BE IT RESOLVED, the Board of County Commissioners hereby adopts Ordinance No. 18-02, Prohibiting the Accumulation of Rubbish.

BE IT FURTHER RESOLVED, that Darryl Glenn, duly elected, qualified member and President of the Board of County Commissioners, or Mark Waller, duly elected, qualified member and President Pro Tempore, of the Board of County Commissioners, be and is hereby authorized and appointed on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

Chuck Broerman
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El Paso County, CO



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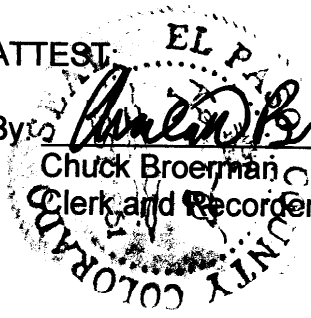
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DONE THIS 21st day of November, 2017, at Colorado Springs,
Colorado.

ATTEST

By: Chuck Broerman

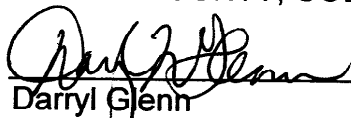
Chuck Broerman
Clerk and Recorder



BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: Darryl Glenn

Darryl Glenn
President



**EL PASO COUNTY
STATE OF COLORADO**

**ORDINANCE NO. 18-02
PROHIBITING THE ACCUMULATION OF RUBBISH**

WHEREAS, pursuant to Section 30-15-401, C.R.S., the Board of County Commissioners of El Paso County, Colorado (“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 (1)(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 06-02, prohibiting the accumulation of rubbish; and

WHEREAS, the Board has determined that changes to the ordinance are necessary in order to make its enforcement more efficient, effective and timely; 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, fire and other hazards, and air, noise, and water pollution.

Section 2: Authority and Effect.

2.1 This Ordinance is authorized pursuant to, inter alia, C.R.S. §§30-11-101, et seq., §§ 30-15-401, et seq., and §§ 29-20-101, et seq.

2.2 Ordinance 06-02, enacted April 2, 2007, is hereby repealed and replaced in whole by this Ordinance.

2.3 Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions undertaken by the County pursuant to previous regulations, provided that the violation is also a violation of this Ordinance.

Section 3: Applicability.

3.1 This Ordinance shall apply throughout the unincorporated area of El Paso County.

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 which enters into an intergovernmental agreement with El Paso County relating thereto.

3.3 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 4: Definitions.

Agricultural Land: any parcel of land presently classified as agricultural use by the El Paso County Assessor's Office, as defined and subject to the restrictions contained in C.R.S. § 39-1-102(1.6).

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 which enters into an intergovernmental agreement with El Paso County relating thereto.

Director: the Executive Director of the El Paso County Planning and Community Development Department, or his or her authorized designee.

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.

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

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 1 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 equipment, used appliances or furniture, oil, carcasses of dead animals, any object likely to injure any person or create a traffic hazard, or any other object which has been discarded or abandoned.

Section 5: Unlawful Acts.

It shall be unlawful for any owner to allow the accumulation of rubbish on any lot, parcel, 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, parcel, or tract of land.

Section 6: Notice of Violation and Executive Determination.

6.1 If probable cause exists to believe that a violation of this Ordinance has occurred, a notice of violation shall be sent via first class mail to the owner's mailing address as listed in the records of the El Paso County Assessor's Office and to the mailing address of the property in question, if one exists.

6.2 The notice of violation shall specifically describe the nature of the violation and shall require that the violation be corrected within fourteen (14) calendar days after the date of the notice. The notice of violation may require that the violation be corrected within a period of time less than fourteen (14) calendar days if the Director determines, in his or her sole discretion, that the violation presents an immediate risk to the public health, safety, or welfare.

6.3 The notice of violation shall provide that the owner may request additional time to correct the violation.

6.4 If the violation is not corrected within the time period established in the notice of violation or approved extension of time, the Director may issue an executive determination to the owner authorizing the County Attorney's Office to pursue remedies under Sections 9, 10, or 11 of this Ordinance, subject to appeal as set forth below.

6.5 The Director shall mail the executive determination to the owner in the same manner as the notice of violation. The executive determination shall specify the nature of the violation and provide ten (10) calendar days after the date of the executive determination for the owner to request an appeal, at no cost to the owner, to the Board prior to the County Attorney's Office pursuing remedies under Sections 9, 10, or 11 of this Ordinance.

6.5.1 The executive determination shall state that the owner may appeal the Director's decision to the Board. The owner must submit an appeal in writing to the Director. Any written appeal must be received by the Director within ten (10) calendar days after the date of the executive determination. Any such appeals received beyond ten (10) calendar days shall be deemed untimely.

6.5.2 If no appeal is received within ten (10) calendar days after the date of the Director's executive determination, then the Director's executive determination shall be final and the County Attorney's Office may proceed with litigation to seek remedies pursuant to Section 9, 10, or 11 of this Ordinance.

Section 7: Appeal Hearing.

7.1 If the Director receives a timely appeal of his or her executive determination as set forth in Section 6, then the Director shall place the matter on the Board's next available land use hearing agenda which meets the requirements of Section 7.2 below.

7.2 The owner shall be notified of the date, time, and place of the hearing via first class mail to the owner's mailing address as listed in the records of the El Paso County Assessor's Office no less than five (5) calendar days prior to the hearing.

7.3 At the hearing, the owner shall have the opportunity to present evidence and testimony to show cause why further enforcement action should not be taken. The Board shall consider all such evidence and testimony, along with any presentation, evidence, or testimony offered by the Planning and Community Development Department or other County staff, in reaching its decision to affirm or overturn the decision to issue the executive determination.

7.4 At the conclusion of the appeal hearing, the Board may decide to overturn the decision to issue the executive determination or may affirm the decision and instruct the Director to proceed with one or more of the enforcement mechanisms provided in Sections 8, 9, 10, and/or 11 below.

7.5 The Appeal Hearing shall not be considered a quasi-judicial or legislative action or matter under any circumstances.

Section 8: Criminal Prosecution.

8.1 Only the Board may authorize the initiation of a criminal prosecution for violations of this Ordinance in County Court.

8.2 County code enforcement officers shall have the authority to issue citations or summonses and complaints for the purpose of enforcing this Ordinance.

8.3 Any person who violates this Ordinance commits a class 2 petty offense, and, upon conviction thereof, shall be punished by a fine of two hundred and fifty dollars (\$250) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third and subsequent offenses. This graduated fine schedule shall apply to repeat offenses committed by the same owner with respect to the same lot, parcel, or tract of land.

8.4 The penalty assessment procedure provided in C.R.S. § 16-2-201 shall be followed in enforcing this Ordinance.

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

8.6 In addition to the penalties prescribed in Section 8.3 of this Ordinance, persons convicted of a violation of this Ordinance are subject to a surcharge in an amount fixed by statute that shall be paid to the clerk of the court by the defendant, as provided by C.R.S. § 30-15-402 (2)(a).

Section 9: Civil Injunction.

The Board, or the Director through an executive determination, may refer violations of this Ordinance to the County Attorney's Office for the institution of an injunction, mandamus, abatement, or other appropriate action to prevent, enjoin, abate, or remove a violation.

Section 10: County Removal of Rubbish.

10.1 The Board, or the Director through an executive determination, may refer violations of this Ordinance to the County Attorney's Office for application to the courts for an administrative entry and seizure warrant for the removal of the rubbish pursuant to Section 11 of this Ordinance.

10.2 Upon obtaining an administrative entry and seizure warrant, the Director shall have the authority to remove the rubbish by and through County forces, contract, or otherwise. If the owner fails to pay the cost of removal within ten (10) calendar days after the Director mails an invoice for such cost, the whole cost thereof, including ten percent (10%) for inspection and incidental costs in connection therewith, may be assessed upon the lots, parcels, and tracts from which such rubbish has been removed. Any assessment pursuant to this subsection 10.2 shall be a lien against such lot, parcel, or tract of land until paid and shall have priority based upon its date of recording

10.3 In case the assessment prescribed in subsection 10.2 above is not paid within thirty (30) calendar 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 the assessment, together with a ten percent (10%) 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 apply to the collection of assessments pursuant to this subsection 10.3.

Section 11: Administrative Entry and Seizure Warrant.

11.1 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.

11.2 A sworn or affirmed affidavit shall be prepared and submitted to the court which shall establish the factual basis for the 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, evidence that the owner has received notice of the violation and has failed to remove the rubbish within a reasonable prescribed period of time, and the method of disposal or temporary impoundment of such rubbish, whichever the court deems appropriate. Said affidavit shall be accompanied by a copy of this Ordinance.

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

Section 12: Impoundment.

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

12.2 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.

12.3 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 12.5 below.

12.4 Reasonable storage fees may be collected for impounded items, which shall be paid into the General Fund of the County. If the owner notifies the Director in writing that the impounded items will not be reclaimed and may be disposed of, the Director shall dispose of such items and may collect reasonable fees for such disposal, to be paid into the General Fund of the County.

12.5 Impoundment shall be for a period not to exceed sixty (60) calendar days, whereupon the impounded items shall be regarded as abandoned and may be disposed of as the Director sees fit. If the owner of the impounded items seeks to reclaim them within the 60-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 of the El Paso County Land Development Code; the Director has verified that the property from which the impounded items were removed has remained in compliance with this Ordinance; and all costs assessable under this Ordinance, including storage costs, have been paid in full with cash, money order, or cashier's check.

Section 13: 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 14: Severability Clause.

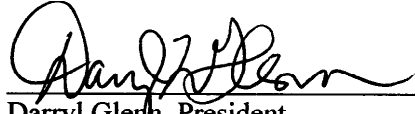
If any section, subsection, clause, or phrase of this Ordinance is for any reason held to be invalid, such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 15: Publication and Effective Date.

The foregoing text is the authentic text of El Paso County Ordinance No. 18-02. The first reading of the ordinance took place on October 24, 2017. It was published in full in the El Paso County Advertiser and News on November 1, 2017.

It was adopted without amendment on November 21, 2017, and is to be republished by title in the El Paso County Advertiser and News on November 29, 2017 and shall take effect on January 1, 2018.

DONE AND SIGNED this 21st day of November, 2017, at Colorado Springs, Colorado.



Darryl Glerh, President
Board of County Commissioners of
El Paso County, Colorado

I hereby certify and attest that the provisions of Section 15, Ordinance 18-02, as set forth hereinabove are true and correct to the best of my knowledge, information and belief.



Chuck Broerman, County Clerk and Recorder
El Paso County, Colorado

