

Board of Supervisors

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RESOLUTION 03- 11

A RESOLUTION TO ADOPT THE COCHISE COUNTY SOLID WASTE DISPOSAL ORDINANCE NO. 032-03

WHEREAS, the inappropriate and unlawful disposal of solid waste is a significant public health and safety issue in Cochise County; and

WHEREAS, the improper storage or abandonment of solid waste upon public and private property poses a threat to the health and well being of the citizens in this community and decreases the property values of land and improvements in this area; and

WHEREAS, in order to properly address this problem, given the number and magnitude of the current illegal waste sites, a more coordinated approach, using all of the available legal and regulatory means, is necessary; and

WHEREAS, the Facilities and Solid Waste Department is the appropriate department to coordinate this task, but cooperation and assistance will be required from all County departments and employees, if the inappropriate disposal of solid waste is to be properly controlled; and

WHEREAS, this Ordinance is intended to consolidate existing state and local legal authority for addressing solid waste into one County Ordinance, but will not limit or restrict the existing authority of other agencies and departments to continue to address such broad and potentially overlapping issues as public health, land use planning and regulation, highway safety or criminal law enforcement; and

WHEREAS, after a public hearing, duly noticed and called for this purpose, the Board of Supervisors finds that the adoption of this Ordinance is necessary and proper to carry out the duties, responsibilities and functions of this County and is in the best interests of the citizens of this County,

NOW, THEREFORE, BE IT RESOLVED THAT the Cochise County Solid Waste Ordinance, attached as Exhibit A, is hereby adopted and shall be applicable in the unincorporated areas of this County thirty (30) days following the date of this approval.

EXHIBIT "A"

COCHISE COUNTY SOLID WASTE DISPOSAL ORDINANCE

I. Introduction and Statement of Purpose.

The improper and unlawful disposal of solid waste is a significant public health and safety issue in Cochise County. Persons who illegally dump solid waste, commit criminal littering, or improperly store waste materials on public and private property threaten the health and well being of the members of this community. These actions also decrease the property values of the unauthorized disposal sites as well as those in the surrounding areas. This Ordinance is intended to combine many of the various laws and regulations that address the disposal of solid waste and to create a comprehensive means for lessening this problem in Cochise County. The fundamental purpose of this Ordinance is to preserve and to protect the health, comfort, welfare and safety of the public by regulating the uncontrolled disposal of solid waste.

This Ordinance is not intended to rescind or modify any of the potentially overlapping authorities that various County officials and departments may have through other laws, regulations, and ordinances. The existing land use regulations, sanitary code, hazard abatement ordinance, and state laws, among others, shall remain in full force and effect. This Ordinance is intended to bring together some of these overlapping regulations and result in a more coordinated and focused response to this significant problem in Cochise County.

II. Definitions.

For purposes of this Ordinance, the terms listed below shall have the following meanings:

- A. Approved Site.** A site permitted and approved by the Arizona Department of Environmental Quality for the disposal or transfer of solid waste or a site that meets the criteria for an "agricultural landfill" under A.R.S. § 49-766.
- B. Putrescible waste.** Organic materials that are subject to decomposition by bacteria and fungi, resulting in the formation of foul-smelling, incompletely oxidized by-products; rotten, malodorous waste.
- C. Solid Waste.** All discarded materials, including but not limited to garbage, trash, rubbish, refuse, sludge, ashes, dead animals, cut brush and

vegetative waste, abandoned appliances, junk automobiles and components thereof, waste tires, construction waste, and all other putrescible and non-putrescible wastes, but excluding wastes that are classified as "hazardous" by State or federal law. This term does not include materials that are properly maintained as "accessory outdoor storage," as authorized by the Cochise County Zoning Regulations.

- D. Solid Waste Inspector.** The County employee or employees in the Department of Facilities and Solid Waste that have been designated by the Director of that Department to administer this program.

III. Violations and Responsibilities.

- A.** It shall be a violation of this Ordinance to deposit, dump or dispose of solid waste on any private or public property that is not an approved site for the disposal or transfer of solid waste.
- B.** It shall be a violation of this Ordinance to maintain for a period of more than seven (7) days any putrescible waste on any private property, other than at an approved site. It shall be a violation of this Ordinance to maintain for a period of more than fifteen (15) days any solid waste on private property, other than at an approved site.
- C.** Any person generating, producing, storing or transporting solid waste or any person who has received any solid waste on his or her property shall be responsible for the proper storage, removal, transport and disposal of that solid waste. Property owners shall be responsible for the proper disposal of solid waste deposited upon their property, whether or not that deposition has been expressly authorized.
- D.** When solid waste is generated, produced, stored or received upon a leased property, both the landlord and the tenant are jointly and severably responsible for the proper disposal of any such solid waste, notwithstanding the terms of any lease agreement between those parties.

IV. Judicial Enforcement.

- A. Obligation to Report Violations.** The primary objective of this Ordinance is to prevent the unlawful disposal of solid waste through more aggressive enforcement actions. Each County employee and official, from every department or office, is hereby directed to report immediately any on-going incident of unlawful disposal of solid waste that he or she may witness to an appropriate law enforcement official. To the fullest extent possible, that report shall include the date, time and location of the

incident; a physical description of the person or persons involved; and the license and description of any vehicle being used. County employees and officials, other than law enforcement officials, are not requested to attempt to intervene directly in any such on-going event or to engage in any physical confrontation. All employees are hereby directed to cooperate fully with law enforcement officials so that any such responsible party or parties can be prosecuted to the full extent allowed under the criminal laws of the State of Arizona.

- B. Obligation to Report Unauthorized Disposal Sites.** Each County employee and official, from every department or office, is hereby directed to report to the designated Solid Waste Inspector each location within the unincorporated area of the county that appears to be the result of an unlawful disposal of solid waste. This notification shall include the best available information as to the location of the site and the description of the nature of the waste that is present. The solid Waste Inspector may prepare forms to assist in this notification. The Solid Waste Inspector shall assume the responsibility for investigating all such sites to determine if the person or persons responsible for that unlawful disposal can be identified. If the responsible parties can be identified, the Solid Waste Inspector shall either refer all such information to the appropriate law enforcement officials for criminal investigation and possible prosecution, or initiate a criminal complaint, as authorized below.
- C. Potential State Law Criminal Violations.** There are a number of potential criminal violations that may arise from the unlawful disposal of solid waste. In addition to the more specific laws applicable to certain types of regulated wastes, the generally applicable state laws include, but are not limited to the following, as currently codified:
1. **A.R.S. § 13-1603.** Criminal littering or polluting. Class 6 felony, or class 1 or 2 misdemeanors, depending on the circumstances.
 2. **A.R.S. § 28-7056.** Dumping trash on highways or airports. Class 3 misdemeanor.
 3. **A.R.S. § 36-140.** Violation of Department of Health regulation applicable to solid waste. Class 3 misdemeanor.
 4. **A.R.S. § 49-791.** Dumping solid waste on private or public land in violation of the Solid Waste Management laws. Class 2 misdemeanor.
- D. Violation of the Cochise County Solid Waste Disposal Ordinance.** Separate and apart from the potential crimes referenced above, a violation of this Ordinance shall be a Class 2 Misdemeanor, subject to

imprisonment for a term of not more than four (4) months and a fine of not more than seven hundred and fifty dollars (\$750.00).

- E. Restitution.** A violator may be ordered to pay the economic loss to the property owner or to any other person who has assumed, or who may be responsible for, the cost of disposal of the subject solid waste, including this County, as restitution, in addition to any fine or other penalty.
- F. Solid Waste Civil Citation.** In lieu of referring any such matter to law enforcement officials for prosecution under the criminal law provisions set forth above, the Solid Waste Inspector, or his designee, is authorized to file a civil action on behalf of the County in the Justice Court. If the Solid Waste Inspector has reasonable grounds to believe that a violation exists, the Solid Waste Inspector may issue a Citation. The Citation shall be in a format similar to that of the "Arizona Uniform Traffic Ticket and Complaint" and shall be issued in the manner provided in A.R.S. § 28-1561, et seq. The Citation shall state with reasonable particularity the nature of the violation. The Citation will further notify the respondent that in the event of a failure to appear as required, the Court may enter a default judgment against the respondent and impose a civil penalty. These cases shall be subject to the same procedures as are applicable to civil traffic violations, as specified in Article 4, Chapter 5 of Title 28, Arizona Revised Statutes, to the fullest extent possible.

The civil penalty imposed for any such violation shall not exceed two hundred and fifty dollars (\$250.00), in addition to any penalty assessments or other court payments that may be applicable to this proceeding.

V. Solid Waste on Public Road Property.

In the event that the responsible party cannot be identified and the solid waste has been deposited on a public road, county highway, or other easement or right-of-way owned or held in trust for public use by Cochise County, the matter shall be referred to the Cochise County Highway and Floodplain Department. That Department shall assume full responsibility for the removal and disposal of all solid waste that may be illegally deposited on any such public property.

VI. Administrative Enforcement.

- A.** In the event that no directly responsible party can be identified, the owner and any lessee or occupant of the property upon which the waste has been disposed shall be held responsible for the proper disposal of any solid waste that may be inappropriately deposited on that property.

B. Notice of Violation.

Upon reasonable belief that a violation has occurred, the Solid Waste Inspector shall:

1. Prepare a notice of violation in writing that shall be served upon the owner and upon any lessee or occupant that has been identified. Service shall be by personal service, directly to the individual, or by certified mail. If the notice is served by mail, the service shall be sufficient if mailed to the last know address of the property owner, as indicated in the most recent identification of the this property for property tax purposes. The Solid Waste Inspector or other person authorized to serve process may perform personal service of this notice.
2. The notice shall identify the subject property; shall provide that the owner and any occupant or lessee shall have thirty (30) days to remove and properly dispose of the subject solid waste and shall include the estimated cost of removal, if the County were to be required to take this action.
3. The notice shall also advise the recipient that he or she may appeal this notice of violation to the Board of Supervisors within ten (10) days of the date of the notice. Any appeal shall be submitted to the Clerk of the Board in writing and shall specify the grounds for the appeal.
4. The Clerk of the Board shall set a date to hear an appeal upon the receipt of a timely notice of appeal and shall provide the appellant with written notice of that hearing not less than ten (10) days prior to the hearing.
5. The Board shall determine, based upon a preponderance of the evidence presented at the hearing, whether a violation has occurred. The Board may uphold, reverse or revise the notice of violation. The Clerk of the Board shall record the action of the Board and advise the appellant in writing of the Board's decision. The decision of the Board shall be final. A notice of violation that has not been appealed within the authorized period of time shall also constitute a final administrative decision.

C. Abatement and Assessment.

In the event of a final administrative decision finding a violation, the Solid Waste Inspector shall:

1. Issue an order of abatement directing the removal of the solid waste. The order shall provide that if the property owner or other responsible parties do not remove and properly dispose of the solid waste within the designated number of days from the date of that order, the County shall proceed to do so with its own employees, agents or contractors. The Solid Waste Inspector shall designate a time for this action which shall be not less than ten (10) nor more than thirty (30) days, depending on the nature and amount of the waste at issue. The order shall be in writing and shall include the estimated costs of the removal, including the estimated administrative costs to be incurred by the County.
2. A copy of the order of abatement shall be posted on the subject property. The order shall also be sent by certified mail to the owner, at his or her last known address or the address indicated in the property tax records. The order shall also be sent to any lessee or occupant that has been identified, at his or her last known address.
3. If the owner, lessee or occupant has failed to properly remove the designate solid waste within the required time period, the County, its employees, agents or contractors, may enter upon the subject property and remove all of the improperly maintained solid waste.
4. Within thirty (30) days of the date of the completion of any clean up action taken by the County, the Solid Waste Inspector shall prepare an order of assessment. This order shall include the total actual cost of the solid waste removal action, including all disposal costs and an administrative fee. The administrative fee shall be a minimum of Two Hundred Dollars (\$200.00) or ten percent (10%) of the total cost of the waste removal action, whichever is greater. The order shall identify the subject property and state that the entire sum is due and payable in full within thirty (30) days of the date of the order. This order shall be signed by the County Administrator and served by mail upon the property owner.
5. The order of assessment shall include the following notice:

NOTICE: THIS ORDER OF ASSESSMENT WILL BE RECORDED AS A LIEN UPON THE SUBJECT PROPERTY IN FAVOR OF COCHISE COUNTY IF THIS OBLIGATION IS NOT PAID IN FULL WITHIN THE TIME REQUIRED. THE COUNTY MAY TAKE LEGAL ACTION TO FORECLOSE THE LEIN AND

SELL THE PROPERTY TO RECOVER THE AMOUNT
INDICATED IN THIS ORDER.

6. The order of assessment shall also include a notice to the property owner that he or she shall have ten (10) days from the date of the order to appeal the amount of the assessment to the Board of Supervisors. Any appeal shall be submitted in writing and shall include the grounds for any appeal. Only the amount of the assessment is subject to review in this proceeding. The Board shall not review any final administration determination of a violation at this hearing.
7. The Clerk of the Board shall set a date to hear an appeal of the assessment upon the receipt of a timely notice of appeal and shall provide the appellant with written notice of that hearing not less than ten (10) days prior to the hearing.
8. The Board shall determine, based upon a preponderance of the evidence presented at the hearing, the amount of the assessment. The Board may uphold, reverse or revise the assessment. The Clerk of the Board shall record the action of the Board and advise the appellant in writing of the Board's decision. The decision of the Board shall be final. An order of assessment that has not been appealed within the authorized period of time shall also constitute a final administrative decision.
9. The Solid Waste Inspector shall record with the Cochise County Recorder each final order of assessment. The assessment shall constitute a lien on the subject property that runs with the land until paid. The assessment is due and payable in annual installments, subject to the provisions of A.R.S. § 11-268.E. The lien shall be removed upon the payment in full of the amount due. All unpaid assessments shall accrue interest at the rate of ten percent (10%) per year simple interest, until paid in full.
10. This lien may be foreclosed by action by the County Attorney, in the manner required by law, upon request from the County Administrator. Prior to any such request, the Solid Waste Inspector shall review the property, obtain a title report and make a determination as to the feasibility of the collection through the lien foreclosure process.

VII. Additional Remedies.

- A. **Cumulative Remedies.** The remedies available pursuant to this Ordinance are intended to be cumulative and do not bar any other enforcement action provided for by law. Both civil and criminal remedies may be available in appropriate circumstances.

- B. **Civil Search Warrant.** As may be necessary to gain access to private property, for purposes of inspecting or carrying out any of the other purposes of this Ordinance, the Solid Waste Inspector may request a search warrant, in the interest of public health, safety or welfare and as part of this solid waste regulation and inspection program, from the Justice Court. This warrant shall be issued pursuant to A.R.S. § 13-3912 (5).

- C. **Superior Court Actions.** In addition to the remedies provided or referenced in this Ordinance, the Solid Waste Inspector, with the assistance of the County Attorney, may institute injunctive, mandamus, abatement or other appropriate remedies in a civil action in Superior Court, as may be necessary to protect the health and safety of the public.

VIII. Severability.

It is the intent of the Cochise County Board of Supervisors that the various components of this Ordinance are to be considered to be severable. If any portion of this Ordinance is determined to be invalid or unenforceable for any reason by a court of competent jurisdiction, all of the remaining portions of this Ordinance shall continue to be in full force and effect.