

**ORDINANCE
OF THE
BOARD OF COUNTY COMMISSIONERS
OF THE
COUNTY OF DELTA, STATE OF COLORADO**

ORDINANCE NO. 2022-01

**ORDINANCE PROHIBITING THE ACCUMULATION OF
RUBBISH (JUNK) WITHIN DELTA COUNTY**

WHEREAS, pursuant to § 30-15-401, C.R.S., the Board of County Commissioners of Delta 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, § 30-15-401(1)(a), C.R.S., specifically authorizes the adoption of ordinances and regulations to provide for and compel the removal of rubbish within the unincorporated areas of Delta County; and

WHEREAS, on June 23, 2003, the Board of County Commissioners adopted Ordinance 2003-06, repealing Ordinance 98-4 (adopted November 9, 1998) and establishing regulations to compel the removal of rubbish within the unincorporated areas of Delta County; and

WHEREAS, on February 26, 2007, the Board of County Commissioners adopted Ordinance 2007-01 amending Ordinance 2003-06; and

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

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Delta 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 Delta County, Colorado, by eliminating and controlling, to the

extent possible, the accumulation of rubbish within the County. Rubbish, if not eliminated or controlled, can result in visual blight, attractive nuisances, incompatibility with existing land uses, reduction in property values, hazardous or toxic substances being deposited in unapproved sites, attraction of disease-infested rodents and other vermin, air, noise and water pollution as well as and fire and other hazards.

Section 2: Authority/Effect.

This Ordinance is authorized pursuant to, among other things, Part I of Article 11 of Title 30, Part 4 of Article 15 of Title 30, and Part I of Article 20 of Title 29, C.R.S.

Section 3: Applicability.

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

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

Section 4: Definitions.

Agricultural Land. Land currently in agricultural use as the term agricultural land is defined in § 39-1-102(1.6), C.R.S.

Attractive Nuisance. Attractive nuisance is a dangerous condition on a landowner(s) property that may particularly attract children onto the land and pose a risk to their safety. Vehicles, appliances, sand and gravel piles and anything else that could attract the curious also can be considered attractive nuisances. To be considered an attractive nuisance, a potentially dangerous condition exists on the property or, the landowner created or maintained the potential danger or, the landowner should have known the condition would attract children or, the landowner should have known the condition could harm children.

Board. The Board of County Commissioners of Delta County, Colorado.

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

Habitable. The condition of a mobile home/recreation vehicle in which inhabitants can live free of serious defects that might harm health and safety.

Industrial Tract. A lot, parcel, or tract of land classified by the Delta County Assessor's Office as industrial.

Mobile Home. A transportable structure originally designed for residential or business purposes and having, or designed to have, water, electrical, and sewage connections similar to those of conventional dwellings, not meeting the specification required for a recreation vehicle.

Owner. The owner of record, whether individual, partnership, firm, company, corporation, governmental agency, or other association of persons, any authorized agent or representative of the owner of record, as well as any tenant, occupant or inhabitant of the property.

Recreation Vehicle. Any building, structure, or vehicle designed and/or used for living or sleeping and/or recreational purposes and equipped with wheels to facilitate movement from place to place, and automobiles when used for living or sleeping purposes and including pick-up coaches (campers), motorized homes, boats, travel trailers and camping trailers not meeting the specification required for a manufactured or mobile home.

Rubbish. For purposes of this Ordinance shall be defined as:

- (a) 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).
- (b) Junk vehicle or junk recreation vehicle, defined as a vehicle that is inoperable or missing parts so that it is not maintained for driving and which by virtue of its condition cannot be or is not restored to an operable condition within ninety (90) days from the date of the rubbish complaint, but not including a vehicle which is stored within a completely enclosed building or screened.
- (c) Junk mobile home that is in a condition which presents a substantial danger or hazard to public health, safety, or welfare, which is unused by the owner, which is uninhabited because of deterioration or decay, which condition constitutes a fire hazard, or subjects adjoining property to danger or damage by storm, soil erosion, or rodent infestation, or which becomes a place frequented by trespassers and transients seeking a temporary hideout or shelter.
- (d) Worn out or discarded articles or materials, e.g., bottles, glass, cans, scrap metal, used/worn-out vehicle parts, rubber, disposable packages or containers, paper, cardboard, furniture, furnishings, carpet, sporting equipment, construction debris, appliances, carcasses of dead animals, household trash and all other items commonly referred to as junk or garbage and any combination thereof, not

stored within a completely enclosed building or screened. This material is not permitted to be stored in an abandoned or junk mobile home, recreation vehicle, or vehicle.

Screen, Screened, or Screening. A method of visually shielding or obscuring rubbish, as defined in this section, by permanent construction and maintenance of six (6) foot high solid fences, earth berms, or the use of densely planted landscaping materials to lessen the visual impacts on surrounding properties and roads. Fences (including gates) shall be constructed of materials and colors that blend with the surrounding landscape and whose vertical surface is covered by a solid or opaque material through which no complete visual images can be seen. Plastic, cloth, or any like material that will deteriorate over time is not permitted as screening material.

Vehicle. A device that is capable of moving itself, or of being moved, from place to place upon wheels or endless tracks. "Vehicle" includes, without limitation, a bicycle, electrical assisted bicycle, or EPAMD, but does not include a wheelchair, off-highway vehicle, snowmobile, farm tractor, or implement of husbandry designed primarily or exclusively for use and used in agricultural operations or any device moved exclusively over stationary rails or tracks or designed to move primarily through the air.

Section 5: Exemptions.

5.1 This Ordinance shall not apply to industrial tracts of ten (10) or more acres or to agricultural land, as such terms are defined by in this ordinance.

Section 6: Unlawful Acts.

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

6.4 It shall be unlawful for any owner to cause or allow an attractive nuisance on any lot, parcel or tract of land in the County under such owner's control, possession,

management or ownership, or upon any alley or sidewalk adjacent to such lot, parcel or tract of land.

Section 7: Complaints.

7.1 Any person may file a complaint that property in Delta County is in violation of this Ordinance. Such complaint must be in writing. The County shall not be obligated to investigate anonymous complaints or complaints that are not filed in writing. The complaint shall be filed in the appropriate Delta County office.

7.2 Delta County officials and employees, including the Code Compliance Officer, is authorized to investigate and pursue violations of this Ordinance in the regular course of their duties; that is, without a complaint being filed.

7.3 Any complaints on file based upon Ordinances 2003-06 and 2007-01, shall be deemed to be filed as of the effective date of this Ordinance. Complainants shall not be required to refile their complaints.

Section 8: Notice and Order for Removal of Rubbish.

8.1 In the event that rubbish accumulates on any lot, parcel or tract of land in the County, or upon any alley or sidewalk adjacent to such lot, parcel or tract of land the Code Compliance Officer will conduct an investigation of the site to determine if an unlawful condition exists. In the event that the Code Compliance Officer, or other authorized County official or employee, determines that an unlawful condition exists, a Notice and Order shall be issued to the owner requiring the owner to:

- (a) Remove such rubbish within twenty (20) days from the date of said Notice and Order, or
- (b) Enter into an agreement to mitigate the accumulation of the rubbish as described in 8.2, below.

8.2 Should the owner desire to enter into an agreement to mitigate the accumulation of the rubbish, such owner shall immediately notify the Code Compliance Officer, and the parties shall enter into negotiations towards a mitigation agreement. Mitigation includes, but is not limited to, a phased and/or timed removal plan and screening; however, such agreement shall not be for a period to exceed ninety (90) days. If the Code Compliance Officer determines that the negotiations have been unsuccessful, or the agreed upon mitigation has been unsuccessful, they shall issue written notice to the owner requiring removal of the rubbish within twenty (20) days.

8.3 Said Notice and Order or written notice pursuant to 8.2 shall be deemed issued by personal service or by placing the same in the U.S. mail, certified, return receipt requested, to the owner's last known address as indicated on the County's assessment roll.

Section 9: Reserved

Section 10: Removal of Rubbish by County: Assessment of Costs; Collection.

10.1 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 8 above, from the notice that negotiations were unsuccessful, or the agreed upon mitigation has been unsuccessful, under 8.2 above, the Board shall have the authority by resolution to remove or cause to be removed, such rubbish, either by and through County resources, contract, or otherwise. If the owner fails to pay the costs of removal within five (5) days after receipt of invoice, the whole cost thereof, including five (5) percent for inspection and incidental costs in connection therewith, may be assessed upon the lots, parcels or tracts from which such rubbish has been removed. Any assessment pursuant to this subsection 10.1 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.

10.2 In case the assessment prescribed in subsection 10.1 above is not paid within ninety (90) days from the date of the mailing of an invoice for the cost of the removal of such rubbish by Delta County, such assessment may be certified to the Delta 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 10.2.

Section 11: Emergency Order.

11.1 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.

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

11.3 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 resources, 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 10 above.

Section 12: Enforcement.

12.1 Pursuant to § 30-15-402.5, C.R.S., the Delta County Code Compliance Officer is authorized to investigate and enforce violations of this Ordinance and may issue citations or summonses and complaints enforcing this Ordinance. Also, in compliance with § 13-6-503, C.R.S., the Code Compliance Officer is authorized to present civil infractions in any court of applicable jurisdiction; that is, the Code Compliance Officer is authorized to serve as the complaining witness and offer evidence of facts concerning the alleged infraction, provide sworn testimony and shall answer questions as appropriate.

12.2 The Board hereby designates the County Attorney, or their 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 their designee cannot represent Delta County, or the Board deems it otherwise appropriate, the Board may appoint the District Attorney of the 7th Judicial District to perform such legal enforcement duties in lieu of the County Attorney.

Section 13: Administrative Entry & Seizure Warrant.

13.1 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, in accordance with § 30-15-401(1)(a)(I)(B), C.R.S. Only the Board may authorize the initiation of an administrative entry and seizure warrant.

Section 14: Impoundment.

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

14.2 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.

14.3 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 14.4 below.

14.4 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 Land Use Code; 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 15: Civil Prosecution.

15.1 Pursuant to § 30-15-402(1). C.R.S. any person who violates any county ordinance commits a civil infraction and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars for each separate violation.

15.2 **Penalty Assessment.** The penalty assessment procedure provided in § 16-2-201 C.R.S., is authorized. When a person is issued a summons and complaint alleging a violation of this Ordinance, the issuing officer may give the person a penalty assessment notice pursuant to § 16-2-201, C.R.S.

15.3 **Penalties.** The Board shall adopt, or update, by Resolution a graduated fine schedule in compliance with § 30-15-402(1) C.R.S., for violations of this Ordinance. Such graduated fine schedule may provide for increased penalty assessments for repeat offenses by the same individual.

15.4 In addition to this penalty, persons convicted of a violation of this Ordinance are subject, pursuant to § 30-15-402 (2)(a), C.R.S., to a surcharge of ten dollars, to be paid to the clerk of the court for credit to the victims and witnesses assistance and law enforcement fund established in the judicial district.

15.5 All fines and forfeitures for the violation of this Ordinance shall be paid to the Delta County Treasurer within thirty (30) days of receipt and shall be deposited into the general fund of the County.

Section 16: 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, including, but not limited to injunctive actions. 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 17: Safety Clause.

The Board hereby finds, determines, and declares that this Ordinance is necessary for the health, safety, and welfare of Delta County, Colorado and its citizens.

Section 18: 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 19: Repeal of Ordinance 2003-6 and Ordinance 2007-01.

Upon the effective date of this Ordinance, Ordinance 2003-06 and Ordinance 2007-01, shall be repealed and replaced.

Section 20: Publication and Effective Date.

The foregoing text is the authentic text of Delta County Ordinance No. 2022-01. The first reading and Introduction of said Ordinance took place on _____, 2022 at a regularly scheduled Board of County Commissioners' Meeting. It was published in full in the *Delta County Independent* on _____, 2022. The Ordinance will be considered for adoption on second reading at a regularly scheduled Board of County Commissioners' Meeting on _____ 2022, and if adopted shall take effect _____, 2022.

DONE AND SIGNED this ____ day of _____ 2022, at Delta,

Colorado.

Recorder

ATTEST:

[SEAL]

Teri Stephenson Delta County Clerk and

BOARD OF COUNTY COMMISSIONERS
OF DELTA COUNTY, COLORADO

Wendell Koontz, Vice Chairman

By:

Mike Lane, Commissioner

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Don Suppes, Chairman