

**Archuleta County
State of Colorado
Board of County Commissioners**

ORDINANCE NO. 9-2008

**AN ORDINANCE ADOPTING REGULATIONS TO ABATE,
CONTROL AND REQUIRE REMOVAL OF NUISANCE
ACTIVITIES.**

WHEREAS: Archuleta County (“the County”) receives numerous calls and complaints regarding trash, abandoned vehicles and other sources of threats to the public health, safety and general welfare commonly known as “nuisances”; and

WHEREAS: The State of Colorado (“State”) grants statutory counties authority to regulate and provide for the removal of rubbish, including trash, junk and garbage, from lots and tracts of land within the county except industrial tracts of ten acres or more and agricultural land currently in agricultural use (C.R.S. 30-15-401); and

WHEREAS: Pursuant to C.R.S. 30-15-401, the Board of County Commissioners of Archuleta County, Colorado (“the Board”) has the general enabling power to adopt ordinances for the control and 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 diseases; and

WHEREAS; The Archuleta County Board of County Commissioners has determined a comprehensive nuisance ordinance is in the interest of the health, safety, and general welfare, of residents, visitors and property alike.

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF
COUNTY COMMISSIONERS FOR ARCHULETA COUNTY AS
FOLLOWS:**

That the Board of County Commissioners by this Ordinance does hereby adopt the regulation and abatement of nuisances, and the following rules and procedures for the administration of said Ordinance, set forth as follows:

SECTION A. Name

This Ordinance shall be titled the “**Archuleta County Nuisance Ordinance**”.

SECTION B. Purpose

Intent:

Provide a comprehensive mechanism for the identification, abatement and to compel the removal of rubbish; including trash, junk and garbage under authority of State law, and specifically, C.R.S. 30-15-401, *et seq.* Collectively, it is the intent of this County to define these prohibited activities as “nuisances”.

Application:

These provisions shall apply to any establishment, as defined hereinafter, throughout the County as authorized pursuant to C.R.S. 30-15-401 wherein any of the conditions hereinafter specified are found to exist; provided, however, that any condition which would constitute a violation, but is duly authorized under any other County, State, or federal law, is and shall be an affirmative defense to prosecution.

This Ordinance shall apply to all zones and classifications of property within the unincorporated limits of Archuleta County; with the exception of actively farmed agricultural properties, as designated by the Archuleta County Assessor.

SECTION C. Nuisances.

It shall be unlawful to cause or maintain a “nuisance”.

“Nuisance” shall mean any activity constituting an act(s) and or violation(s) identified within this Ordinance engaged in, or a continuing violation of three (3) or more days.

DECLARED A NUISANCE: The following acts or conditions are hereby declared by Ordinance to be “nuisances” within the unincorporated limits of Archuleta County, Colorado, except as limited by C.R.S. 30-15-401(a)(1)(A), industrial tracts over 10 acres and land assessed as agricultural by the Archuleta County Assessor :

1.) ANIMALS

A. Violations of Animal Control Regulations

Any condition in violation of the County’s Animal Control or applicable zoning and land use laws regulating the permissibility and number of animals allowed.

B. Animal-related odor, noise or waste

Failure to provide for the protection of surrounding properties from odor and

or noise generated by animals, or the existence of unsanitary or unhealthy conditions impacting adjacent properties.

C. Unlicensed by the Department of Agriculture or Illegal Kennel/Pet Animal Facilities

The ownership, maintenance of, or operation of, a dog or animal kennel without a current license or in conflict with County land use, zoning and other applicable Ordinances.

2.) JUNK/INOPERATIVE MOTOR AND RECREATIONAL VEHICLES

The keeping, storage, depositing or accumulation of motorized or recreational vehicles where deemed to be detrimental to or presenting an existing or potential risk to the public health, safety and general welfare.

3.) GARBAGE AND RUBBISH

The keeping, storage, depositing or accumulation of the above or other similar materials detrimental to the public health, safety and general welfare.

4.) BUILDING MATERIALS

A. Unusable construction materials or debris not disposed of expeditiously.

B. Building materials being used, or to be used, for a project of repair or renovation for which a valid building permit has been obtained and is active may be stored for such period of time as is necessary to expeditiously complete the project, and shall not considered a nuisance under this Ordinance.

5.) TRANSPORT OF NUISANCE MATERIALS

The transport of any materials identified by or inferred within this Ordinance which are not properly secured.

SECTION D. Responsibility for Maintenance.

Applicability:

Every owner, occupant, lessee or holder of any possessory interest in an establishment within the County's jurisdiction is required to maintain their structures and premises so as not to create or maintain a nuisance, as defined herein.

Liability for Violation:

Enforcement action may be brought against both or either the occupant or owner of any property found to be in violation of this Ordinance.

However, the owner shall remain liable for violation hereof regardless of any contract or agreement with any third party regarding such establishment or the occupation of the establishment by a third party.

Enforcement:

Enforcement is an administrative action for abatement. The County , by and through its Enforcement Officers will be the delegated authority to inspect for and enforce these regulations.

The County has, by the adoption of this Ordinance, the authority to seek the recovery and collection of all fines and costs associated with enforcing these regulations and to carry out any and all acts as required in securing compliance and abatement as specified herein.

Should the County be required to abate the nuisance because it was not abated after due notice, then this shall be treated as a violation of law and prosecuted and adjudicated according to those procedures and penalties identified herein, and as well as all applicable penalties generally such as may be deemed appropriate by the court of jurisdiction to compel compliance and restitution.

SECTION E. Complaints.

Complaints from the Public:

Any person may file a complaint alleging a violation of these regulations. Such complaint shall be in writing and signed by the complainant. The County shall not be obligated to investigate anonymous complaints or complaints not filed in writing.

Enforcement Officers:

The Enforcement Officers designated by the County under this Ordinance may act to investigate any complaint when provided with information by law enforcement, health services or other governmental and quasi-public entities, and/or where there is reasonable information to believe that a violation effecting public health, safety, or welfare exists, or where in the normal conduct of their duty the Enforcement Officer becomes aware of a potential violation.

Documentation of Complaints:

All complaints shall be logged and recorded on written forms approved by the County.

Those complaints deemed incomplete, erroneous or to not constitute a violation or result in prosecution shall not be required to be maintained or available for public inspection.

SECTION F. Inspection.

Procedures:

Upon receipt of a complaint the delegated Enforcement Officers for the County shall perform a site inspection of the identified property to determine the validity of the complaint.

Timing:

Said inspection shall take place within 10 working days of the complaint, unless such evidence exists to believe that an immediate health or safety risk exists; where in such emergency cases an inspection shall be performed as soon as possible, but not more than 24 hours from verification of the complaint.

Investigation:

As part of the inspection, the Enforcement Officers shall attempt to speak to the complainant, occupant and/or owner of the property of the alleged violation, as well as such persons and/or agencies as may have direct knowledge pertinent to the complaint.

Documentation:

The Enforcement Officers shall maintain a detailed record of all findings, including time, date, persons spoken to and titles or agency (if applicable), photographs and copies of any maps, Ordinances, or other materials relevant to the inspection.

SECTION G. Notification Process.

Nuisance Declared:

If, after inspecting the property on which a nuisance has been reported, and the existence of a nuisance is determined to exist, as defined within this Ordinance, then the following abatement procedures shall be followed.

Notice:

A written Notice of Violation (NOV) that a documented nuisance exists shall be prepared by the designated Enforcement Officer and the NOV shall be posted on the property, sent by registered mail and served on any person in possession of the property at the time of NOV.

Failure or refusal of the occupant or owner to receive the NOV does not affect the right of the County to seek abatement or prosecution.

An NOV shall be deemed to have been served to the owner if it is mailed by U.S. Postal Service, Certified Mail with a Return Receipt Requested, to the last known address of the property owner as such appears in the County's property assessment records.

Information Required:

A Notice of Violation (NOV) shall, at minimum, contain the following:

1. A description of the alleged nuisance.
2. The location the alleged nuisance occurred.
3. The date the nuisance was declared.
4. A statement setting forth the requirements to abate the violation and the date by which abatement must occur which shall not be less than thirty (30) days from issuance of the NOV.
5. The penalties for failure to abate the alleged nuisance.

6. The contact person for the County and contact information for appealing the NOV or obtaining additional information.

SECTION H. Appeal.

Procedure:

The Notice of Violation (NOV) shall contain the contact person and method for filing a written appeal.

The owner of the identified property may, in writing, contest or provide written explanation to the Enforcement Officer or propose a detailed plan and time frame to abate the violation.

All appeals must be hand served to the Enforcement Officer for which a receipt will be provided or sent by Registered Mail.

If the owner receiving the NOV is unable to reach an appropriate resolution with the Enforcement Officer after filing an explanation or remedial plan for abatement, the cited party may file a written appeal attached to the NOV to the County Administrator.

Timing:

A response to the NOV must be filed to the Enforcement Officer within 20 days. The Enforcement Officer shall provide a written response by registered mail within 10 days of receiving the explanation or plan from the cited party.

An appeal to the County Administrator may only be made after an appeal to the Enforcement Officer has been rejected and must occur within 14 days of receiving the written rejection by the Enforcement Officer. The date will be determined by using the later date between the posting or confirmation of delivery or attempt to deliver the NOV by U.S. Postal Service Registered Mail.

Action:

The Officer signing the NOV may, based upon a proposed abatement plan, extend the period allowed for abatement or may present a counter-proposal to the property owner to secure abatement.

The County Administrator (or qualified designee) may, based upon the merits of an appeal, elect to terminate or uphold the complaint, and shall notify the appellant in writing of their finding within 10 days of the appeal.

No action shall be taken regarding the NOV during any period between the filing of an appeal and receiving a written response from the County.

Limitations:

Extensions or agreements granted shall not be deemed dismissal of the original NOV and any failure to complete the terms of the extension or abatement agreement can result at

the Enforcement Officer's sole discretion in reinstating the timeframe for the original complaint.

Only the Enforcement Officer signing the complaint, or their replacement, shall be permitted to grant extensions of an original NOV.

All stays or extensions, and dismissals of NOV shall be provided to the served parties in writing to be valid under this Ordinance. Submission of an appeal or abatement plan rejected by the Enforcement Officer or accepted in writing shall not be grounds for defense or failure to abate within the required 30 days.

Failure to Satisfy Notice of Violation (NOV):

Failure to respond to the NOV within the 30 days allowed within the Ordinance, failure to provide or adhere to the terms of an abatement plan or extension granted in writing by the Enforcement Officer shall be deemed as failure to abate.

The Enforcement Officer shall then submit the NOV in accordance with County procedures, for prosecution as a violation of law for appearance before the appropriate court.

SECTION I. Abatement.

Remedies of Law:

Consistent with this Ordinance, failure to respond or comply with a NOV shall result in the seeking by the County or its designated agents, of any and all permissible remedies under the law to abate the conditions which constitute the nuisance, as identified in the NOV and may include:

1. Seeking a complaint by the Sheriff's Office to be served upon the owner and/or parties identified in the NOV.
2. Requesting the court to award an administrative entry and seizure warrant for the County to execute or to contract to execute abatement of the violations.
3. Any and all other remedies applicable to the condition to be abated/remediated and consistent with and permissible under the laws of Archuleta County, the State of Colorado and the United States Government.

Responsible Parties:

The Owner of Record of the establishment, premises, location or structure at the time of a NOV shall be responsible for complying with that NOV, and will be liable for any costs incurred by the County therewith, notwithstanding the fact that an interest in said property is transferred to any other party(ies) after such NOV is issued.

In addition, it shall not be a defense if a determination is made where a nuisance exists when the property is vacant, abandoned, foreclosed, under contract, boarded up or otherwise enclosed, unoccupied or encumbered.

Abatement may be done by Private Contract:

If the violator fails to respond to the request for abatement and it is necessary for the County to correct the violation(s), the County may opt to do the work by private contract rather than by County staff.

Sale of Salvaged Materials:

The County may, in conformance with state standards and procedures for the sale of unclaimed property, sell any materials salvaged from an abatement action by the County. Although the County is under no obligation to salvage materials from an abatement, as practicable, the County may do so and sell the same at private or public sale at the best price obtainable and shall keep an accounting of the proceeds thereof.

Statement of Costs:

In the necessity of the County being required to correct the violation(s), a statement of all fees, fines and other expenses, less any net proceeds of the sale of salvageable goods received by the County, shall be submitted to the violator for payment. If not paid within ten (10) days, then a general lien shall be placed in the County's records and the County may pursue collection remedies, which may be available.

SECTION J. Penalties.

Administrative Entry & Seizure Warrant:

No entry upon private property shall be made for the purpose of rubbish or junk or junked vehicle removal or the removal of any materials in connection with an abatement process by the County and/or its legally designated contractors and agents until an administrative entry and seizure warrant has been obtained from a court of competent jurisdiction, in accordance with C.R.S. 30-15-401(1)(a)(I)(B), as amended.

1. *Affidavit for warrant.*

A sworn or affirmed affidavit shall be prepared and submitted, along with supporting documents and/or pictures. Said affidavit shall establish the factual basis for the issuance of a warrant, including evidence that the property owner received NOV of the violation and has failed or refused to abate the violation within a reasonable time. The affidavit shall further give a description and location of the violation, a general list or site plan describing what must be removed to abate the violation, and the method of disposal or temporary impoundment, whichever the court deems appropriate.

2. *Service of warrant.*

Within ten (10) days following the 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 prepaid, to the owner and posted on the subject property; and proof of

execution of the warrant, including a written inventory of any property impounded, shall be submitted to the issuing court.

Criminal Prosecution:

Upon discretion of the County, a criminal prosecution may be brought against the owner in accordance with C.R.S. 30-15-402 and 410.

1. *Separate violation.*

Each day (a 24-hour period) a nuisance exists after a complaint is issued shall constitute a separate violation.

2. *Summons and complaint.*

A summons and complaint may be issued by the County Sheriff or his deputies upon receipt of a sworn statement.

3. *Fine.*

Violation(s) of the provisions of these regulations shall be punishable by a fine of not more than one-thousand dollars (\$1,000.00) for each violation. In addition to this penalty, persons convicted of a violation of these regulations are subject, pursuant to C.R.S. 30-15-402, to a surcharge of ten dollars (\$10.00) 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.

4. *How Paid.*

All fines, inspection fees, costs and forfeitures (except surcharges) for the violation of these regulations shall be paid to the Treasurer of Archuleta County not later than thirty (30) days after imposition.

5. *Jail.*

Violators of the regulations shall also be subject to six (6) months in jail for each violation.

SECTION K. Additional Remedies.

Supplement to Existing Law:

The remedies provided for are supplemental and complementary to all of the provisions of this Code, and State and Federal law, and nothing herein shall be read, interpreted or construed in any manner to limit any existing right or authority of the County to abate and compel removal of any and all nuisances.

Cumulative:

The remedies provided in these regulations shall be cumulative and in addition to any other remedies, which may be available to the County including but not limited to injunctive actions. Nothing contained herein shall be construed to preclude the Board of County Commissioners from seeking such other remedies in addition to, or in lieu of, the remedies herein in addition to, or in lieu of, the remedies herein specified.

SECTION L. Exemptions.

These regulations shall not apply to those establishments otherwise exempt by law, including C.R.S. 30-15-401 and C.R.S. 30-15-401(a)(1)(A), including industrial tracts over 10 acres and land assessed as agricultural by the Archuleta County Assessor.

SECTION M. Miscellaneous.

Effective Date:

These regulations shall take effect and shall remain in effect beginning October 18, 2008.

Period of Public Education Requirement:

The Archuleta County Development Services Department shall, upon passage of this Ordinance, coordinate a period of public education and information regarding the Ordinance, as well as to publicize legal and available means of disposal of nuisance materials covered under this Ordinance and shall meet with currently known potential violators to recommend and coordinate possible mutually acceptable remedies in advance of implementation.

Evaluation and Monitoring:

The Archuleta County Development Services Department shall coordinate and cause to be implemented, in conjunction with the Nuisance Ordinance Enforcement Officer, a 90 day evaluation of the performance of the Ordinance and shall report to the Board of County Commissioners no later than February 1, 2009 with its findings and any recommendations for the amendment of the Ordinance.

At least two (2) subsequent six (6) month reviews shall also be conducted and reported to the Board of County Commissioners.

All evaluations and monitoring shall endeavor to include any effected metro districts, home owners associations and other citizen representation by effected property owners and areas of enforcement, and shall include the opinions of participating residents in its findings.

Safety Clause:

The Board of County Commissioners hereby finds, determines and declares that these regulations are necessary for the health, safety and welfare of the citizens of Archuleta County, Colorado.

Severability:

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

Conflicting provisions:

Where any provision of these regulations conflict with any other provision of these regulations, or any other law, the more stringent requirement, regulation, restriction or limitation shall apply.

SECTION N. Definitions describing terms used in this Ordinance

Abatement:

The removal, stoppage, prostration or destruction of that which causes or constitutes a nuisance under the definition of the Ordinance, whether by removal and proper, legal disposal, or other plan of mitigation acceptable to the County and in conformance with this Ordinance

Agricultural Land:

Any parcel of land, presently and for at least two (2) years prior to any alleged violation of these regulations 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 at C.R.S. 39-1-1-2 (1.6).

Animal Control:

The regulations adopted by the Board of Commissioners for Archuleta County in Ordinance No. 2002-3.

Board:

The Board of County Commissioners for Archuleta County, Colorado.

County:

Archuleta County, Colorado.

Enforcement Officer.

The position responsible for enforcement duties pertaining to this Ordinance. The Enforcement Officer, prior to appointment, shall demonstrate prior experience in the area of code or law enforcement and have a full working knowledge of the Ordinance.

The enforcement officer shall, within one (1) year of appointment obtain National Certification from the International Code Council (ICC) under the ICC 2006 International Property Maintenance Code testing module.

Establishment:

Any real property, premises, structure, mobile home, or location at which an activity constituting a nuisance is alleged to exist.

Garbage:

Disposable waste generated as a by-product of individual human activity, having no intrinsic economic value and which presents either a health concern or litter problem if improperly disposed of

Junk/Inoperative Vehicle:

Any vehicle which is inoperable, which is wholly or partially dismantled, or which does not bear current license plates and which is visible from roads or adjoining, adjacent or neighboring property. A junk vehicle covered by a tarp is deemed to be “visible” within the meaning of this section.

Kennel/Pet Animal Facility:

A lot or building in which four (4) or more dogs or cats, at least four (4) months of age, are kept commercially for board, propagation, or sales.

Manufactured Home:

A home that was factory-built in the U.S.A. to the HUD Title 6 construction standards which took effect June 15, 1976 and displaying a Certification Label and Data Plate.

Mobile Home:

A mobile home is a factory-built home that was built before June 15, 1976, and not built to a uniform construction code. HUD presumes these homes to be unfit for habitation.

Modular Home:

A home that is factory-built to the uniform building code adopted by Archuleta County.

Owner:

The owner of record of an Establishment or any person with legal, financial or equitable interest in real property subject to these regulations and on which the alleged nuisance activity exists at the time of the violation.

Recreation Vehicle:

Any building, structure or vehicle designed and/or used for living or sleeping and/or recreational purposes and equipped with wheels or transported by trailer (whether directly attached at the time of violation or not) 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, snow mobiles, travel trailers and camping trailers not meeting the specification required for a manufactured or mobile home.

Rubbish:

Rubbish, as used herein shall include the following:

1. ***Used tires.***
Outside storage of used tires (except as otherwise regulated pursuant to the Solid Waste Disposal Sites and Facilities Act, Part 1 of Article 20 of Title 30, C.R.S. and any rules and regulations promulgated there under). Storage prohibited by this Ordinance shall not extend to used tires incorporated into construction approved by the County or an approved landscaping plan, including but not limited to retaining walls and culverts.
2. ***Junk vehicle or junk recreation vehicle.***
As defined herein above.
3. ***Junk mobile or manufactured home.***

A mobile home in a condition which presents a substantial danger or hazard to public health, safety, or welfare because it is unused by the owner; is uninhabited or uninhabitable because of deterioration, or decay; subjects adjoining property to danger or damage by storm, soil erosion, or persons seeking temporary hideout or shelter.

4. *Discarded articles or materials.*

Discarded articles or materials, which include but are not limited to personal property such as bottles, glass, cans, scrap metal, used/worn out vehicle parts, rubber, disposable packages or containers, paper, cardboard, furniture, carpet, construction debris, appliances and any combination thereof, disposed of on the ground and not stored within a completely enclosed building or screened. Said articles and materials are not permitted to be stored in an abandoned or junk mobile home, recreation vehicle or vehicle.

Violations:

As defined previously within this Ordinance. For violations occurring over more than twenty-four (24) hours subsequent to a Notice of Violation (NOV) being served, each subsequent day of the occurrence may under this Ordinance be deemed to be a separate violation.

SECTION O. Effective Date

This Ordinance shall be effective thirty (30) days after adoption and publication, as required by C.R.S. 30-15-405

APPROVED AND ADOPTED IN PAGOSA SPRINGS, ARCHULETA COUNTY, COLORADO, this 16th day of September, 2008.

Board of Commissioners

Robert C. Moomaw, Chairman

ATTEST:

County Clerk & Recorder, June Madrid