

OURAY COUNTY
STATE OF COLORADO
ORDINANCE NO. 95-1

**AN UNINCORPORATED COUNTY-WIDE ORDINANCE PROHIBITING THE
ACCUMULATION OF RUBBISH ON PRIVATE PROPERTY, INCLUDING PENALTY
PROVISIONS AND ENFORCEMENT FOR VIOLATION OF THE ORDINANCE**

WHEREAS, pursuant to Section 30-15-401, C.R.S., the Board of County Commissioners of Ouray County, Colorado (hereinafter referred to as 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(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 Ouray County, and said statute also authorizes the courts to issue administrative entry and seizure warrants in order that counties may perform by their own forces the removal of rubbish from private property; and,

WHEREAS, residents of Ouray County 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 Ouray County, the Board should take the following action;

NOW, THEREFORE, BE IT ORDAINED, that by the Board of County Commissioners of Ouray 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 Ouray 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 II of Title 30, Part 4, of Article 15 of title 30, and Part 1 of Article 20 of Title 29, C.R.S.

Section 3: Applicability.

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

3.2 This Ordinance shall apply within the corporate limits of any incorporated town or city within Ouray County which elects by appropriate ordinance or resolution to have the provisions of this Ordinance apply therein, and upon which an intergovernmental agreement between Ouray 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 Ouray County, Colorado

County: The unincorporated areas of Ouray County, including public and state lands, and the corporate limits of any incorporated town or city within Ouray County which elects by appropriate ordinance or resolution to have the provisions of this Ordinance apply therein and upon which an intergovernmental agreement between Ouray 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 Ouray 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 1 of Article 20 of Title 30, C.R.S., and any rules and regulations promulgated hereunder); 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. Further, this Ordinance shall not apply to concrete or rock "rip-rap" which is used to stabilize or shore up river banks, provided that such rip-rap must comply with any applicable, County, State or Federal law or regulation.

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. Mail, certified, return receipt requested, to the owner's last known address as indicated on the County's assessment roll. In the event the owner shall fail or refuse to accept the certified letter, the Ouray 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 receiving party upon the return receipt or a copy of the Notice and Order.

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. Mail, 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 owner shall be entitled to present evidence of any plan to screen the alleged rubbish from view from adjoining properties. If said plan is acceptable to the Board, the Notice and Order may be delayed in its enforcement in order to allow the owner to implement said screening plan. Upon full implementation of the screening plan as approved by the Board, the Notice and Order shall be dismissed. 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 Ouray County, such assessment may be certified to the Ouray 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 Ouray County Land Use Department.

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 that the Ouray County Attorney or his/her designee cannot represent Ouray 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 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 Any material or equipment having salvage or reuse value may 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 Land Use Code 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 (\$300.00) for each violation.

14.4 All fines and forfeitures for the violation of this Ordinance shall be paid to the Treasurer of Ouray 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. Noting 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 Ouray 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 Ouray County Ordinance No. 94-1.

The first reading of said Ordinance took, place on December 19, 1994. It was published in full in the Ouray County Plaindealer and Ridgway Sun on December 29, 1994.

It was adopted, with amendment, on February 13, 1995, and is to be republished by title in the Ouray County Plaindealer and Ridgway Sun on March 2, 1995, and shall take effect on April 1, 1995.

Introduced, read and passed this 13th day of February, 1995.

Voting in the affirmative: Commissioners Alan Staehle, Joseph M. Mattivi,

Voting in the negative: None.

Absent: None.

Abstain: Don A. Caddy

THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO

By: [Signature]
Joseph M. Mattivi, Chairman

STATE OF COLORADO)
)ss.
COUNTY OF OURAY)

I, Michelle Olin, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid, do hereby certify that the annexed and foregoing Ordinance is truly copied from the Records of the Proceedings of the Board of County Commissioners for said Ouray County, now in my office and that the provisions of Section 18, Ordinance No. 95-1, as set forth hereinabove, are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Ouray this 13th day of Feb. A.D., 1995

[Signature]
Michelle Olin, County Clerk

Per _____
Judy Wolford, Deputy