

An
ORDINANCE
REPEALING ORDINANCE NO. 2015-02 AND ADOPTING AN ORDINANCE
GOVERNING THE CONTROL OF RUBBISH AND JUNK

ORDINANCE NO. 2023-__

WHEREAS, pursuant to Colorado Revised Statute (“C.R.S.”) §30-15-401, *et seq.*, the Board of County Commissioners of Montrose County (Board) is authorized to adopt ordinances for the control of those matters of purely local concern; and

WHEREAS, C.R.S. §30-15-401(1)(a)(l) authorizes the Board to adopt ordinances to provide for and compel the removal of rubbish, including trash, junk, and garbage, from property within the county; and;

WHEREAS, Montrose County citizens have expressed concerns regarding properties that have accumulated large amounts of rubbish, including trash, junk, and garbage and County Ordinance 2015-02 is insufficient to adequately address the issues; and

WHEREAS, to help address this issue, the County hereby repeals Ordinance 2015-02 and adopts this Ordinance to provide for and compel the removal of rubbish, including trash, junk, and garbage; and

WHEREAS, this Ordinance is applicable to properties located in unincorporated Montrose County that are zoned General Residential, Manufactured Home Park Residential, or Multiple Family Residential; and

WHEREAS, the Board has determined that adoption of this Ordinance will preserve and improve the health, safety, and welfare of Montrose County citizens.

NOW THEREFORE, BE IT ORDAINED, by the Board of County Commissioners of Montrose County, Colorado as follows:

MONTROSE COUNTY RUBBISH AND JUNK REGULATIONS

Section 1. AUTHORITY

The Board has the authority to adopt ordinances to provide for and compel the removal of rubbish, including trash, junk, and garbage, from property within the county pursuant to C.R.S. §30-15-401(1)(a)(l).

Section 2. PURPOSE

The regulation of rubbish and junk within Montrose County (hereinafter “the County”) is necessary to preserve and improve the health, safety, and welfare of Montrose County citizens.

Section 3. APPLICABILITY

3.1 This Ordinance only applies to properties located in unincorporated Montrose County that are zoned by the County as 1.) General Residential, 2.) Manufactured Home Park Residential, or 3.) Multiple Family Residential.

3.2 The owner of a property on which a violation occurs under this Ordinance may be liable for such violation, even if committed by a tenant or other occupant.

Section 4. DEFINITIONS

4.1 **“Complaint”** as used in this Ordinance shall mean a written, signed, affidavit submitted by a witness to an alleged violation of this Ordinance. All Complaints must include the name and address of the complainant, a description of the alleged violation and the address where it is located, as well as the date(s) the alleged violation was observed.

4.2 **“Fence”** as used in this Ordinance shall mean any metal, vinyl, stone, or wooden barrier of common design capable of reducing or eliminating visibility onto a property.

4.3 **“Impounded property”** as used in this Ordinance shall mean personal property which has been deemed to be rubbish or junk and impounded by the County.

4.4 **“Junk”** as used in this Ordinance shall mean any broken, abandoned, or discarded item, or any item in disrepair, including but not limited to: trash; unusable or broken machinery; metal or scrap; unlicensed or inoperable motor vehicles or motor vehicle parts or tires; unlicensed or inoperable recreational vehicles or their parts; uninhabitable or decaying mobile or manufactured homes or their parts; discarded construction, remodeling or repair materials; unwanted or discarded non-perishable household items including but not limited to appliances, sporting equipment, and furniture; or any object or material which causes or is likely to cause a public hazard or nuisance.

4.5 **“Owner”** as used in this Ordinance shall mean the owner of real property on record with the Montrose County Tax Assessor’s Office, or the owner of a structure.

4.6 **“Property”** as used in this Ordinance shall mean real property.

4.7 **“Rubbish”** as used in this Ordinance shall mean any household, lawn, or garden waste, including but not limited to: garbage, litter, refuse, debris, paper or cardboard, packaging materials, food waste, dead animal carcasses, or any other perishable items.

Section 5. VIOLATIONS

5.1 Rubbish

- a. It shall be unlawful for any person to allow the accumulation of rubbish on any part of his or her property, unless such rubbish is within a trash can or

container which has a tight fitting lid, in a closed trash bag, or entirely enclosed within a building.

- b. It shall be unlawful for any person to cause the accumulation of rubbish onto any public property or the private property of another, except into a receptacle or container for such purpose which such person is authorized to use.

5.2 Junk

- a. It shall be unlawful for any person to allow junk upon his or her own property, unless such junk is within a trash can or container which has a tight fitting lid, entirely enclosed within a building, or is screened by a fence, structure, or natural barrier, so that the junk cannot be seen from outside of the property.
- b. It shall be unlawful for any person to cause junk to be on any public property or the private property of another without authorization and without complying with the provisions set forth in Section 5.2(a) of this Ordinance.
- c. This Section 5.2 shall not apply to any salvage businesses lawfully located in a General Residential District as of the effective date of this Ordinance, and operated continually thereafter.

Section 6. COMPLAINTS

All Complaints under this Ordinance must be submitted to the Montrose County Planning and Development Department. The County is not obligated to investigate submissions that do not meet the definition of a Complaint pursuant to section 4.1 of this Ordinance, Complaints that do not allege facts sufficient to suggest a violation of this Ordinance has occurred, or Complaints that cannot be verified by the Planning and Development Director, or his or her designee (hereinafter the "Enforcement Officer.")

Section 7. NOTICE OF VIOLATION

- 7.1 All investigations regarding violations of this Ordinance shall be handled by the Enforcement Officer.
- 7.2 If the Enforcement Officer determines that a violation of this Ordinance exists, a Notice and Order may be sent ordering that the property owner either:
 - a. Remove the rubbish or junk which is in violation of this Ordinance within twenty-one (21) days;
 - b. Enter into an agreement with the Enforcement Officer to mitigate the violation within twenty-one (21) days; or
 - c. Submit a written request, within twenty-one (21) days, for a hearing before the Board of County Commissioners to show cause why such Order should not be enforced.

- 7.3 The Notice and Order may be issued by personal service to the property owner as listed with the County Assessor or by certified mail, return receipt requested, to the property address as well as property owner's address as listed with the County Assessor, if different. Notice shall be deemed provided when either (1) delivery pursuant to this subsection 7.3 is confirmed, or (2) three business days after attempted delivery pursuant to this subsection 7.3 have passed. If delivery was unsuccessful, a copy of the Notice and Order must also be posted in a conspicuous place at the property where the violation is occurring for Notice to be deemed provided.
- 7.4 The Enforcement Officer has the authority to enter into an agreement with the owner regarding mitigation of the violation, so long as the violation is reasonably expected to be completely resolved within ninety (90) days. Mitigation which is expected to take longer than ninety (90) days must be approved by the Board.

Section 8. HEARING

- 8.1 If an owner requests a hearing before the Board to show cause why the Order should not be enforced, such a hearing shall be set as early as practical. The owner shall be notified of the date of the hearing via first class mail at least seven (7) days in advance of the hearing.
- 8.2 At the hearing, the owner and any other interested party may present testimony and evidence regarding the property and alleged violation. The owner shall have the burden to show by preponderance of evidence that the alleged violation does not violate this Ordinance.
- 8.3 The Board shall issue a written determination, via first class mail, within fourteen (14) days of the hearing declaring whether this Ordinance is violated. If the Board determines the condition violates this Ordinance, it shall set a date by which the violation must be corrected.
- 8.4 A determination by the Board pursuant to this Section is final, and is appealable only through applicable civil court procedures.

Section 9. ADMINISTRATIVE ENTRY AND SEIZURE

- 9.1 If an owner fails to correct a violation pursuant to the Notice and Order or other procedures set forth in Sections 7 and 8, the County may seek an administrative entry and seizure warrant for authorization to enter the property in order to abate the violation from the county or district court in Montrose County.
- 9.2 In seeking an administrative entry and seizure warrant, the Enforcement Officer shall swear an affidavit to the Court which sets forth the following factual basis for the warrant; 1.) the address or general description of the location of the property; 2.) a general description of rubbish or junk which is in violation of this Ordinance; 3.) evidence that the owner, if applicable, has been given Notice in a timely fashion;

and 4.) information as to how the County intends to dispose of or store the rubbish or junk once removed.

- 9.3 Once the court issues the administrative entry and seizure warrant, the County, through its own or other agents, shall have fourteen (14) days to execute the warrant in conformity with the directions of the issuing court. Proof of the execution of the warrant shall be submitted to the court.

Section 10. IMPOUNDMENT

- 10.1 The County may, at its discretion or by order of the court, impound any rubbish or junk having resale or salvage value, either at a private or County-owned impound lot.
- 10.2 Upon impoundment, the County shall notify the owner via first class mail of the location and contact information of the impound lot where the impounded property is being stored.
- 10.3 If the owner does not claim the impounded property within ninety (90) days, such property shall be considered abandoned and may be disposed of by the County as it sees fit.
- 10.4 If the owner claims the impounded property within ninety (90) days, it shall be released only if all of the following conditions are met: 1.) the real property from which the impounded property was removed is currently in compliance with this Ordinance; 2.) the County is adequately assured that the impounded property will be appropriately stored so as to no longer violate this Ordinance; 3.) all costs assessed under this Ordinance, including removal and storage costs, have been paid in full. If the foregoing conditions have been met, the impounded property may be released to the owner to be removed from the impound lot at the owner's expense.

Section 11. EMERGENCY ACTIONS

If the County reasonably believes a violation to be an immediate threat to the health or safety of Montrose County citizens, it may take all necessary steps, including the entry upon private property, to abate or eliminate such without notice. In those cases, where time is permitting, the County shall take reasonable efforts to provide notice and obtain emergency abatement orders from any court of competent jurisdiction. In any instance in which emergency abatement procedures are taken, the costs incurred by the County may be collected in accordance with Section 13 of this Ordinance.

Section 12. LIABILITY

- 12.1 The County may elect to prosecute the Owner of a property alleged to be in violation of this Ordinance in accordance with C.R.S. §§ 30-15-402, 410.
- 12.2 Each violation under this statute shall be a civil infraction, and punishable by a fine of not more than one thousand dollars (\$1,000.00) for each violation.

- 12.3 Each day a violation continues to occur under this Ordinance after the time period set forth for its removal has expired shall constitute a separate violation.

Section 13. RECOVERY OF COSTS

- 13.1 All costs associated with the removal of rubbish or junk, and impoundment or disposal thereof, shall be paid by the owner, including an additional five percent (5%) of such costs for inspection of the property and incidental expenses.
- 13.2 Costs which the County may recover include, but are not limited to, all out-of-pocket costs and expenses, costs attributable to County employee time and equipment use, reasonable attorney's fees and an overhead and administrative charge as set forth in the County of Montrose Regulations Manual.
- 13.3 A bill of costs shall be mailed to the owner, and payment in full shall be due within fourteen (14) days of the date of the bill. In the event that the bill remains unpaid after fourteen (14) days, the costs may be assessed as a lien against the property until paid and shall have priority over all other liens except general taxes and prior special assessments. If the costs remain unpaid after ninety (90) days from the date of the bill, such costs together with a ten percent (10%) penalty for collection expenses shall be certified to the Montrose County Treasurer for collection in the same manner as other taxes are collected. The laws of the State of Colorado for assessment and collections of general taxes, including the laws for the sale and redemption of property taxes, shall apply to the collection of assessments pursuant to this Ordinance.

Section 14. OTHER REMEDIES

Nothing in this Ordinance shall be construed to limit or restrict Montrose County's ability to pursue other remedies available under other Montrose County regulations or pursuant to state or federal law. The remedies provided in this Ordinance are not exclusive in any way and may be pursued by Montrose County singly or in combination to achieve the most expeditious resolution to the accumulation of rubbish and junk.

Section 15. CONFLICTS

Should any portion of this Ordinance conflict with any other provision of this Ordinance, with any Montrose County regulation, or with any state or federal law or regulation, that law or regulation which is more stringent shall apply.

Section 16. SEVERABILITY

If any section, clause, sentence, or part of this Ordinance is declared invalid by a court of law for any reason, such determination shall not affect the validity of the remaining provisions of this Ordinance.

Section 17. EFFECTIVE DATE

This Board of County Commissioners hereby finds, determines and declares that pursuant to C.R.S. § 30-15-405, this Ordinance shall be enforced beginning thirty (30) days after the date of the adoption of this Ordinance on second reading. Until such time, the Ordinance No. 2015-02 shall remain in full force and effect.

Section 18. REVOCATION OF PREVIOUS ORDINANCE

By adoption of this Ordinance, and subject to Section 17 above, Ordinance No. 2015-02 is hereby repealed.

First Reading occurred on ____, 2023.

Publication in the Montrose Daily Press occurred on ____, 2023.

APPROVED, AND ADOPTED on the *Second and Final* Reading, this __ day of _____, 2023.

**BOARD OF COUNTY COMMISSIONERS
MONTROSE COUNTY, COLORADO**

Keith Caddy, Chairman

ATTEST: _____
Sue Hansen, Vice-Chair

Deputy Clerk to the Board

Roger Rash, Commissioner