

**Ordinance No. 2022-1**

**AN ORDINANCE CREATING RUBBISH AND JUNK REGULATIONS**

WHEREAS, pursuant to § 30-15-401, C.R.S., the Board of County Commissioners of Prowers 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 compel the removal of rubbish or junk within the unincorporated areas of Prowers County (also referred to as the "County"); and

WHEREAS, residents of Prowers County experience problems with the accumulation of rubbish or junk upon adjacent or nearby properties; and

WHEREAS, the Board has determined that in order to preserve the public health, safety and welfare of the citizens of Prowers County, the Board should take the following action.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PROWERS COUNTY, COLORADO:

**Section 1: Purpose.**

The purpose of this Ordinance is to protect the public health, safety and welfare of the citizens of Prowers County, Colorado, by eliminating and controlling, to the extent possible, the accumulation of rubbish or junk within the unincorporated areas of Prowers County.

**Section 2: Authority.**

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 Prowers County.

3.2 This Ordinance shall apply to the owner of a property on which a violation occurs, even if committed by a tenant or other occupant.



#### **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 § 39-1-102(1.6), C.R.S.

Commercial. Of, or pertaining to, or engaged in the buying, selling, renting, or leasing of goods, services, or property.

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

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

Junk. Goods, material or objects that are so worn, deteriorated, or obsolete as to make them unusable in their existing condition and/or which are subject to being dismantled or processed for reuse.

Junked Vehicle. A junked vehicle is any motor vehicles which because of a legal or mechanical condition or defect cannot be operated on a public street or highway. It shall be prima facie evidence that a vehicle is mechanically inoperable if its motor, axle, wheel or similar necessary parts have been removed from the vehicle. It shall be prima facie evidence that a vehicle is legally inoperable after thirty (30) days written notice given pursuant to this Ordinance a vehicle fails to possess and display current license plates. A motor vehicle means any self-propelled vehicle which is designed primarily for travel on the public highways and which is generally and commonly used to transport persons and property over the public highway.

The term "junked vehicle" as defined herein shall not include vehicles within a properly screened portion of the premises of a junk or salvage dealer who use of the property is proper under the Zone District wherein the property is located, vehicles on the premises of any property zoned business dealing in the selling, repairing, or servicing, of vehicles, vehicles within a fully enclosed building, or vehicles enclosed by fencing which is constructed of such material and in sufficient height so that vehicles are not visible from a height of five (5) feet along the property line.

Junkyard. Any lot, parcel or tract used for the storage, keeping, sale or abandonment of junk and/or for the dismantling, demolition or abandonment of automobiles, or other junk or parts thereof.

Mobile Home. A detached, single-family housing unit that may not meet the definition of Residence set forth in the Prowers County Land Use Regulations, and which has all the following characteristics:

(1) Designed for long-term occupancy and containing sleeping accommodations, a flush toilet, a tub or shower bath, and kitchen facilities, and which has plumbing and electrical connections provided for attachment to outside systems;



(2) Designed to be transported after fabrication, on its own wheels, or on flatbed or other trailers or on detachable wheels;

(3) Arrives at the site where it is to be occupied as a complete unit and is ready for occupancy except for minor an incidental unpacking and assembly operations, location on foundation supports or jacks, underpinned, connections to utilities and the like;

(4) Exceeding either eight (8) feet in width and thirty-two (32) feet in length, excluding towing gear and bumpers;

(5) is without motive power; and

(6) Is certified pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et. Seq., as amended, and all regulations enacted pursuant thereto, including any local modifications as are expressly allowed by Federal law.

For purposes of this Ordinance, this definition does not apply to units that have been determined by the Prowers County Land Use Administrator to have been built prior to January 1, 1980 and only applies to Mobile Homes that are moved into or within Prowers County after the date of the adoption of this Ordinance.

Owner. Any person who, alone or jointly or severally with others, shall have legal title to any land or structure, or contract of purchase, with or without accompanying actual possession thereof; or shall have charge, care or control of any land or structure as owner or agent of the owner; or as executor, administrator, conservator, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this Ordinance and of the rules and regulations adopted pursuant thereto, to the same extent as if such person were the owner.

Recreational Vehicle. A vehicular-type primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home.

Rubbish. 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, carpet, construction debris, appliances and any combination thereof, disposed of on the ground and not stored within a completely enclosed building or screened. This material is not permitted to be stored in an abandoned or junk mobile home, recreational vehicle or vehicle.

Screen, Screened, or Screening. A method of visually shielding or obscuring rubbish or junk as defined herein, 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 required to be licensed or registered, or is used to carry persons or goods from one place to another, and which is self-propelled or designed to be transported from one place to another upon wheels or endless tracks.

## **Section 5: Exemptions.**

5.1 Due to the rural and agricultural nature of Prowers County, this Ordinance shall not apply to Industrial tracts of ten (10) or more acres or to agricultural land, as such terms are defined in this Ordinance.

5.2 This Ordinance shall not apply to automobile service and body work shops that have designated screened areas for junk vehicles, mobile homes, and recreational vehicles.

5.3 This Ordinance shall not apply to salvage junkyards, junk vehicles, mobile homes, and recreational vehicles maintained in the regular course of a Commercial enterprise of the owner and permitted, so long as such salvage junkyards, junk vehicles, mobile homes and recreational vehicles are screened. Existing salvage junkyards meeting the definition of a Commercial enterprise shall be "Grandfathered" for five (5) years with or without the filing of a rubbish or junk complaint. All existing salvage junkyards shall come into compliance with the screening requirements within five (5) years after the date of adoption of this Ordinance.

## **Section 6: Unlawful Acts.**

6.1 It shall be unlawful for any owner to cause or allow the accumulation of rubbish or junk on any lot or tract of land in Prowers 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 or junk in Prowers 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: Complaints.**

7.1 Any person may file a complaint that a property in Prowers County is in violation of this Ordinance. Such complaint must be in writing on a form provided by the Prowers County Land Use Administrator and signed by complainant. Prowers County shall not be obligated to investigate anonymous complaints or complaints that are not filed in writing. The complaint shall be filed in the Prowers



County Planning Office.

7.2 Any complaints on file based upon Prowers County Zoning Regulations 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 or Junk.**

8.1 In the event that rubbish or junk accumulates on any lot or tract of land in Prowers County, or upon any alley or sidewalk adjacent to such lot or tract of land, and a complaint is filed in writing pursuant to Section 7, above, such complaint shall be forwarded to the Prowers County Land Use Administrator, who will conduct an investigation of the site to determine if an unlawful condition does exist. In the event that the Prowers County Land Use Administrator determines that an unlawful condition does exist, a Notice and Order shall be issued to the owner requiring the owner to:

- (a) Remove such rubbish or junk within twenty-one (21) days from the date of said Notice and Order,
- (b) Enter into an agreement to mitigate the accumulation of the rubbish or junk as described in 8.2, below, or
- (c) Request to appear before the Board of County Commissioners within said twenty-one (21) days to show cause why such Order should not be enforced.

8.2 Should the owner desire to enter into an agreement to mitigate the accumulation of the rubbish or junk such owner shall immediately notify the Prowers County Land Use Administrator 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. During such times as the negotiations are taking place, the twenty-one (21) days for removal described in 8.1, above, shall be stayed. If an agreement is entered into it shall be brought before the Board and be subject to approval by the Board of County Commissioners. If the Prowers County Land Use Administrator determines that the negotiations have been unsuccessful, he/she shall issue written notice to the owner and to the Board, such notice requiring that the owner remove the rubbish or junk within twenty-one (21) days.

8.3 Said Notice and Order may be issued 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. If service via certified mail is unsuccessful, service may be completed pursuant to Colorado Rule of Civil Procedure 4. If personal service cannot be obtained, service by publication pursuant to Colorado Rule of Civil Procedure 4 is permissible, except that service by publication shall be one time per week for a period of fourteen (14) days, and a copy of the Notice and Order must also be posted in a conspicuous place at the property where the violation is occurring.



**Section 9: Show Cause Hearing.**

9.1 Within twenty-one (21) days of the date of the Notice and Order issued under Section 8 above, the owner may request and shall be granted a show cause hearing before the Board. No less than seven (7) days prior to the date of the show cause hearing, notice of the time, 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, including the complainant.

9.2 At the hearing, the owner and any other interested party may present testimony and evidence regarding the property and the alleged violation. The owner shall have the burden to show by a preponderance of the evidence that the alleged violation does not violate this Ordinance.

9.3 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 the Ordinance, it shall set a date by which the violation shall be corrected. Upon the request for the hearing, and pending the Board's decision, the removal order shall be stayed.

9.4 A determination by the Board pursuant to this Section is final, and is appealable only through applicable civil court procedure.

**Section 10: Removal of Rubbish or Junk by County: Assessment of Costs: Collection.**

10.1 If the owner fails or refuses to remove such rubbish or junk within twenty-one (21) days from the date of the Notice and Order issued in accordance with Section 8 above, from the notice that negotiations were unsuccessful under 8.2 above, or from the decision of the Board under Section 9, above, the Board shall have the authority by resolution to remove or cause to be removed, such rubbish or junk, either by and through County forces, 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 and tracts from which such rubbish or junk has been removed. The County may also recover costs attributable to County employee time and equipment use, reasonable attorneys' fees and an overhead and administrative charges. 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 or junk by Prowers County, such assessment may be certified to the Prowers 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.**

If the County reasonably believes a violation to be an immediate threat to the health or safety of Prowers 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 10 of this Ordinance.

**Section 12:     Enforcement.**

12.1 The above-prescribed sections of this Ordinance shall be administered and enforced by the Prowers County Land Use Administrator.

12.2 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 the County Attorney or his/ her designee cannot represent Prowers County or the Board deems it otherwise appropriate, the Board may appoint the District Attorney of the 15th 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 or junk 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)(1)(B), C.R.S. as amended.

13.2 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 or junk. Said affidavit shall establish the factual basis for the issuance of a warrant, including evidence that the property owner has received notice of the violation and has failed to remove the rubbish or junk within a reasonable prescribed period of time, a reasonably specific description of the location of the property, a general list or site plan describing the rubbish or junk to be removed from the property, and the method of disposal or temporary impoundment of such rubbish or junk, whichever the court deems appropriate.

13.3 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 14: Impoundment.**

14.1 Impoundment of removed rubbish or junk 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 County's Specific Development Regulations; the County has verified that the property from which the impounded items were removed has remained in compliance with this 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: Criminal Prosecution.**

15.1 If so directed by the Board, a criminal prosecution may be brought against the owner in accordance with §§ 30-15-402 and 410, C.R.S.

15.2 Each day that such rubbish or junk continues unremoved from the premises after the date of expiration of the twenty-one (21) day period prescribed in Section 8 hereinabove shall constitute a separate violation.

15.3 Each violation of the provisions of this Ordinance shall be a class 2 petty offense, and punishable by a fine of not more than one thousand dollars (\$1,000.00) for each violation.

15.4 All fines and forfeitures for the violation of this Ordinance shall be paid to the Treasurer of Prowers County 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 the citizens of Prowers County, Colorado.

**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.

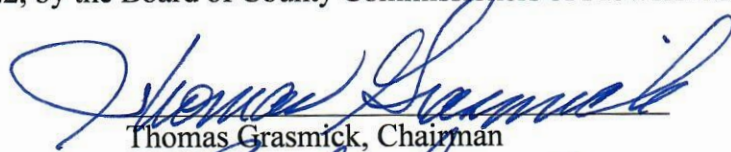
**Section 19: Conflicts.**

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

**Section 20: Publication and Effective Date.**

The foregoing text is the authentic text of Ordinance No. 2022-1. The first reading of said Ordinance took place on April 26, 2022 at a regular meeting of the Board of County Commissioners. It was published in full in the Lamar Ledger on May 12, 2022. The second reading of this Ordinance took place on May 24, 2022 at a regular meeting of the Board of County Commissioners and was amended on June 7, 2022 at a regular meeting of the Board of County Commissioners. This Ordinance was published in full, as amended, in the Lamar Ledger on June 23, 2022. This Ordinance was adopted on third reading at a regular meeting of the Board of County Commissioners on July 5, 2022 and shall take effect on July 5, 2022.


ADOPTED this 5<sup>th</sup> day of July, 2022, by the Board of County Commissioners of Prowers County, Colorado.

  
Thomas Grasmick, Chairman

  
Ronald Cook, Vice-Chairman

  
Wendy Buxton-Andrade, Commissioner

ATTEST:

  
Jana Coen, County Clerk