

Otero County Commissioners
1101 New York Avenue
Alamogordo, NM 88310-6935

March 3, 2019

RE: Expansion of county “Inspector” powers; **Ordinance No. 19-03 Solid Waste Ordinance**

Commissioners,

The proposed modifications to the Solid Waste Ordinance infringe on private property rights. Like “Gun Control” the claim is that if you just give up your rights then your government will make you safe. In this case it is the Otero County Board of County Commissioners fronting the lie and pushing for more government so you can make us safe.

For 99.5% of County residents this expansion of county government and government control only adds taxes, inspection hassles and costs for property ownership. There is no benefit for that 99.5%. The remaining 0.5% might see a benefit. The County has done no due diligence to assess the cost/benefit from this Draft or explore alternatives.

This ordinance should be called the “growing government” ordinance. A very few citizens may well benefit, while many, many are negatively impacted. Keep in mind that down the road the bureaucracy will expand, as it always does, and every rural citizen will feel the uneven enforcement hand. The real, big winner is the County Government which gets to expand its budget money, expand its power over our lives, gets to add employees to its empire, add equipment to that empire and enhance county managers careers and marketability. As I hope you know government will continually expand unless our elected leaders say “No!”. The song and dance of “It is for the children.” or “It’s for safety!” sure gets old. I question if this expansion is needed, especially as there are already laws/ordinances that can be used but are not used due to an internal failure of County government. Note that there are already laws to address public safety hazards. The Commission has failed to work with the Sheriff to correct issues by using current law. Now the Commissioners propose to expand government because of their own failures. Is it really just easier to expand government than it is to do the job with existing tools?

Most county residents live in the rural area rather than in a city to be free of constant government oversight and rules, whether it is zoning or zoning hidden in a waste disposal ordinance. Otero County, by this ordinance, is becoming a giant Home Owners Association, complete with a grass height requirement (!).

Besides being a government power grab the proposed additions to the Solid Waste Ordinance are a joke. I am embarrassed that this “Draft” has been published under Otero County’s name. Who writes this stuff? Can’t they proof read? Can’t they spell? The proposals are poorly written. So poorly written that they are not understandable. In addition they are so poor in process design that property owner abuse is almost guaranteed over time. So poor in design that government officials are not held accountable for performance or for abuse. No county employee responsibility what so ever.

Changing the design / language to provide specifics and limit the opportunity for inspector abuse is easy and should have been included in this Draft BEFORE it was published. Making complete sentences is easy and should have been included in this Draft BEFORE it was published. Using a spelling checker is easy and should have been included in this Draft BEFORE it was published. Yet we are to believe this is a well thought out ordinance?

It is sad that this massive government expansion (yes, it is a big change and for a minuscule problem) has little or no protections for citizens and little accountability for inspectors and their supervisor. Further, I personally

disagree when citizens must hire lawyers because the County has written a poor ordinance, an unnecessary ordinance, that gives property owners no recourse and no due process. Before expanding government the BOCC ought to be darn sure the whole county actually needs the expansion to function, that there are greater benefits county wide than the costs to tax payers and property owners. The Commission should demand that any Draft ordinance be well crafted to begin with. I hope the proposed inspectors are of better quality than the author(s) of this Draft! We pay good wages. We should demand competent documents.

I reiterate that this ordinance is unnecessary. It expands government. Government always expands but never contracts so this is the tip of the iceberg for county property “inspection” and compliance. If the BOCC is beyond caring about expansion, costs and property rights infringement, I have a few suggestions to improve the “Draft”, see far below for those.

Fun to note: I just attended a BOCC meeting (Second Amendment on 2/25/19) where all the Commissioners joined in supporting “due process”. Laws proposed in Santa Fe require property to be seized without owners having their day in court and the BOCC was unanimous in criticizing these laws.

Now I read this proposed Otero County ordinance and guess what? The draft ordinance allows the inspector to lock an owner out of their home without the owner having a day in court before hand (kinda like a “Red Flag Law” ain’t it?). The owner is then required to find other housing for his family until the inspector is satisfied. The owner will need a lawyer to appeal (after the fact). Plus Otero County has now mandated new inspections by a State inspector, inspections that were not necessarily in effect when the structure was built, inspections that are not part of present State law and may require massive “up grades” to meet current standards (as required in this ordinance). Meanwhile the family must live somewhere while the all powerful inspector “decides” if all is good enough. Many, many rural county homes are perfectly safe and were built to previous building codes. In fact in rural areas buildings without electrical service or those built before codes are / were not required to be inspected. Notice that there are virtually zero cases where these homes cause public safety problems. Yet the County wants the right to inspect everything, demand upgrades (“Green New Deal” maybe?) and impose confiscation / fines, all without proper due process. How hypocritical is that? And all because of a failure to work with the Sheriff and use existing law.

Changing enforcement from an elected official (Sheriff) who will answer to voters for his performance to an unelected bureaucrat is bad for residents. Property owner abuse or failure to enforce will now be filtered through government layers, kinda like complaining about service at the MVD, good luck with that. The Sheriff can easily be held accountable both by various laws and by the election process. The Draft Ordinance fails to provide this same accountability.

In my view due process is more important than quick and dirty big government takings. A judge should issue a court order after the owner has an opportunity to provide information and before the inspector evicts a family or tags a building. Sure, it is easier to skip the due process business, just ask Santa Fe or citizens in Venezuela.

Most rural property owners are beset by trespassers. These law breakers damage buildings, fences, vehicles, livestock, etc. The County does little to help. Private property is often posted “No Trespassing” to try and save damages. Now the County plans inspections by Compliance Officers. Are inspectors to cross private property with their ruler to measure grass height, without a proper, court issued, properly served, warrant? Does not this action put property owners/inspectors and deputies at risk. Yet apparently the county sees no problem with trespass since there is no discussion in the Draft Ordinance. How is this “due process”? Due process is not addressed, not directly nor by reference, in the ordinance. Perhaps the author(s) live on a city lot and trespassing is not a problem for them? Perhaps the author(s) have never visited rural Otero County? Maybe input from rural property owners would help build a better ordinance? Duh, what a concept! Was any property owner involved in developing this ordinance? Were community meetings held by the BOCC? Why not?

Below I'll furnish my suggested improvements for this ordinance, paragraph by paragraph but first some fun.

I am still laughing and crying about one of the new county requirements. Let me share that, out of order. The proposal is to require every property owner, on penalty of having the County issue a citation, or hire it done, and then bill the property owner, or put a lien on the property or "take" the property. Do this or else:

"No person shall allow accumulation of waste material such as leaf's (sic), pine needles, yard waste deleterious waste noxious or unhealthy growths to lie, grow or be located thereon nor allow grass/weeds to grow taller then 1 foot in height (12 inches) within 50 feet of any structure. Such prohibition shall not apply to lands which are primarily agricultural in nature or property that has never been developed."

LOL. Does the BOCC really want to enforce grass height through out the county? This law is straight from fire ordinances in some New Mexico cities (and an ordinance proposed in Otero County a decade ago and rejected). Will county employees measure all county private property grass height several times a year and issue citations? Or will the county selectively enforce the ordinance based on a political agenda, inspector bias, petty squabbles, disgruntled neighbors looking to get even or ? What a joke.

Will you cite and fine the USFS/Otero County/NM State who "own" property close to many homes and buildings (closer than 50'). This County – State – Federal land often has incredible fuel loads of grass/dead trees/ brush way over 12" in height. Keep in mind that most wildland fires come off of government land (recall the Little Bear Fire, greatest losses in New Mexico history – Thanks USFS!). Or are the big fire causes- County/State/Federal folks exempt from this ordinance? Who else is exempt? Will the BOCC ignore the major owner of excess fuels near buildings and just pick on private property owners? What a poor place to sneak in a fire Safety regulation, Solid Waste indeed.

Golly, duh, there are much better ways to be fire safe other than hiring inspectors and issuing citations (and charging the owners big bucks because a clump of grass was 13" high, 45' from their home). Yes, I have heard the Commission say that this injustice would never, never, ever happen in Otero, "trust us", (reference the first BOCC meeting on the new inspectors in 2018). Well contrarily, yes it will happen, just wait. Examples are everywhere, all over the USA Home Owners Associations are just this anal, governments too. Government regulations always expand. Inspectors must work, even if it is "make work". It will happen in Otero, that is what government bureaucracies do. There is a better way. Why not use it. It involves the County actually working with and helping the property owners rather than the "Do or die" of this ordinance. Anyway, far below, I'll detail some better ideas for that pesky 13" high grass near my barn.

NOTE: WORDS HAVE MEANINGS. The BOCC should read the words and their actual meaning, not pie in the sky verbal "we wouldn't do that" comments from the author. The words are what counts. Here are my suggestions, finally, (abbreviated because of short notice and no chance to provide input in a local BOCC called information meeting since no meetings were held):

1. Reading the entire ordinance it is full of government overreach. I also have to note that the urban areas of the County are very different from the isolated rural areas. Each area has unique needs. Imposing urban "rules" on rural folks (and vice versa) makes little sense. Letting a county employee decide when laws are enforced (or not) is really poor. Yet that is what this ordinance does. It should be rewritten completely, not piecemeal as in this draft. Fire protection should not be sneaked in by way of a solid waste ordinance. I recommend that the commission task a group to help rewrite this. Representatives from county rural

property owners, urban property owners, the county attorney and county administration should be involved. This would help provide an effective, balanced ordinance. That is not the Draft ordinance we have now – I ask you to read it from the stand point of an impacted property owner in rural Otero County. I believe that doing it right is better than doing it fast.

2. Section on: YARD WASTE *Vegetative matter resulting from landscaping, land maintenance and land-clearing operations Including accumulation of pine needles, leaf's (sic) and light combustible material.*

Comments: Spelling? Accumulation of pine needles, leaves etc arguably have nothing to do with landscaping/land maintenance/land clearing. Land clearing/land maintenance/landscaping imply actions / changes by the owner. Pine needles are not generated by land clearing / land maintenance / landscaping. God makes pine needles and has them fall to the ground so new needles may grow.

3. Section on: DILAPITATTED STRUCURE (sic). *In a state of disrepair or ruin as a result of age or neglect.*

Comments: The author(s) must not own a spell checker. How poor for Otero County, apparently the county of illiterates. There are no standards defined for the loose language used in the ordinance, leaving every inspector to arbitrary decide what constitutes “disrepair”. For example would a broken porch railing be “disrepair”? How about a broken screen door? How about peeling paint and a broken screen door? The loose words are “disrepair”, “ruin”, “dilapidated”. Why use this loosey goosey language that is open to interpretation, that will invite argument and property owner abuse forever. Why not define these words – go ahead it will only add a few paragraphs - and it will give both property owners and inspectors specific rules to work from. Why would we not want to have specifics? Letting government be “flexible” is a sure way to have abuse, now and in the future. Give specific rules.

4. Section on: DANGEROUS STRUCURES (sic). *A building in disrepair or ruin as a result of age or neglect unable to secure or repair that is an imminent threat to the health or safety of the public.*

Comments: The author(s) must not own a spell checker. How poor. The author(s) must not be able to write complete sentences. The sentence does not make sense. Must have been in a hurry to write this. Isn't doing it right is better than doing it fast? How poor. Same comments as in number 3 above. Words like “disrepair” or “ruin” can mean almost anything. Where are the specific definitions? Would a rotted wooden porch qualify and result in confiscation and destruction of a man's home?

What? “safety of the public”? Do you mean safety for trespassers? The public has no business on my private, personal property.

5. Section Concerning: *Upon receipt of an application from the person requires to conform to the order and an agreement by the person that he or she will comply with the order if allowed additional time, the code enforcement officer may, in his or her discretion, grant an extension of time, not to exceed an additional 120 days, within which to complete the repair, rehabilitation or demolition, if the building official determines that an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The code enforcement officer's authority to extend time is limited to the physical repair, rehabilitation or demolition of the premises and will not in any way affect the time to appeal his or her notice and order.*

Comment: Note, the author(s) must not be able to write complete sentences. Note that the sentences do not make sense. Poor. Need a rewrite in English. Poor. Must have been in a hurry to write this. Doing it right is better than doing it fast. The section seems to state that “code enforcement officer may, in his or her discretion, grant an extension of time” so this opens the door to abuse and selective enforcement and good ‘ol boy management. What is good for one should be good for all. A definition of how the inspector will make the decision (not just “dangerous”) and whether it will apply uniformly (or not) should be included. Note that the word “appeal” is used and that concept would be important to all Otero County

property owners. No where else in this ordinance is this word mentioned. Why not reference where the appeal process is located in the county documents, or better yet put a section in this ordinance describing the appeals process in its entirety? Property owners will find that helpful.

6. Section concerning: *"No person shall allow accumulation of waste material such as leaves, pine needles, yard waste deleterious waste noxious or unhealthy growths to lie, grow or be located thereon nor allow grass/weeds to grow taller then 1 foot in height (12 inches) within 50 feet of any structure. Such prohibition shall not apply to lands which are primarily agricultural in nature or property that has never been developed."*

Comment: This is a fire ordinance NOT a "Solid Waste Ordinance. What is this doing in the Waste Ordinance? Is this an attempt to backdoor a County wide Fire Ordinance? Just call it something else and no one will notice.

A decade ago Otero County tried out the idea in Gus Marker's (former Emergency Services Director) Proposed OTERO COUNTY WILDLAND/URBAN INTERFACE FIRE CODE. After meetings in Alamogordo and Cloudcroft the Commissioners voted, unanimously, to kill the ordinance. The people of Otero County did not want fire ordinances enforced by inspectors. Now here it is again, but carefully hidden from voters.

I have 15 years or so experience as a volunteer firefighter in the mountains. I have a better idea for improving fire safety based on hands on experience. It involves positive interactions, educating and helping land owners. One program I have personally used is NFPA's "Firewise". It really works. Come visit and I'll show you some successes. This is not new. Otero County used to support this kind of program. Yet the present Emergency Services, while having plenty of time and money for "inspectors", has no time or money for programs like Firewise. Sure some lip service is paid (if you ask them). But ask when was the last time the Emergency Services department held a Firewise meeting in Weed or Mayhill or Cloudcroft or anywhere? Ask when they aided a private property owner (and get their name). The fact is that the County fails to make any but cursory efforts to inform / train / educate property owners about wildland fire risks and what to do. This is a long term failure. With a long term commitment fire safety could be improved in Otero County for a fraction of the cost of inspectors and heavy handed enforcement. My experience is that land owners actually THANK YOU for helping. Something you won't get with a citation and fine. Where is the effort by Emergency Services? It costs a fraction of expanding government. By the way ask me about firefighter recruitment sometime it is a similar story.

7. Section Concerning: DANGEROUS BUILDING. *For the purpose of this Ordinance, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that the conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered.*

Comment: Most of this has mother and apple pie language, who would dare to speak against either? But:

I quote the Draft: *"Whenever the building or structure, or any portion thereof, because of:"*
Is this in English?

I quote the Draft: *"Faulty construction; (???)".* How exactly will this be determined? Will the inspector seek permission from the property owner to come onto private property and inspect the building? Will the inspector trespass to inspect the building? Will the County seek a warrant (with evidence) from a judge allowing access and inspection? What is the standard for so called "faulty" construction? Who determines it? A structural engineer? A high school drop out? The Code Inspector? State Building inspector? All of

the above (committee vote)? Recall the County plans to take this man's property based on "Faulty" construction. Kinda important to detail the takings process don't ya think?

LOL, words have meanings. I quote the Draft (emphasis added): "*(J) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period on excess of 6 months so as to constitute the building or portion thereof an attractive nuisance or hazard to the public.*" LOL. Another English challenged sentence. Is the County really going to take a man's hunting cabin? If a family were to buy a cabin in Otero County for seasonal use they might not visit every six months. I know some who visit annually. This cabin sure would look "abandoned". Now if the neighbor kids trespass by climbing over the 8' high fence and damage the family's cabin, now it is a nuisance (in the county's eyes). The ordinance words call for the "inspector" to take action (for the children don't ya know). The County then (per the ordinance) will add insult to injury and cite/fine the absent property owners who "abandoned" their cabin. Perhaps, according to the words in the ordinance, the county would tear down the cabin and bill the family for the cost. Will the county inform all the seasonal visitors of their risk to property confiscation / fines unless they prove they visited every 6 months? Really? LOL. The BOCC is crazy to consider such a pathetically written "ordinance". Maybe the author should actually define "abandoned"? (And not a word about how children or vagrants trespassing and vandalism is exacerbated by the lack of Otero County law enforcement). Maybe this language should be clarified? Ya think?

What? "***hazard to the public.***" indeed? Do you mean safety for trespassers? The public has no business on my private, personal property. This is NOT public land nor public property.

8. Section Concerning: "*NOTICE OF VIOLATION. Posting. Every notice to vacate shall in addition to being served as provided in §XII shall be posted at or upon each exit of the building and shall be in substantially the following form:*"

Comment: "served as provided in §XII" What? Where is this reference? What is it? Kinda poor to just hang it on without explanation. Kinda important information left out? How will this be posted? Will the inspector seek permission from the property owner to come onto private property and post? Will the inspector trespass to post on the building? Will the County seek a warrant (with evidence) from a judge allowing access and posting? Due process?

I quote the Draft: "*No person shall occupy any building which has been posted as specified in this section. No person shall remove or deface any notice so posted until the repairs, demolition or removals ordered by the building official have been completed and a certificate of occupancy issued pursuant to the provisions of the Building Code.*"

Comment: There are many, many, many buildings that were constructed prior to "Building Codes" in New Mexico. So does this mean that such a building must be upgraded to meet whatever the current code requires? Even if the building is structurally sound? Who will decide? Lotta money involved in upgrading a 1960s home to 2019 codes. State inspectors may not issue a "certificate of occupancy" even if the building complies with all codes and is completely safe (See State regulations). The ordinance words actually state that a family will be forced out of their home by an inspector. Then they may fight for due process. Shouldn't they have due process and then be driven out of their home by a court order?

I quote the Draft: "*The county official may, in addition to any other remedy herein provided, if the notice and resolution required demolition, cause the building to be demolished and the materials, rubble and debris therefrom removed and the lot cleaned. Any repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this Ordinance. Any surplus*

realized from the from the demolition thereof, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.”

Comment: So the County will tear down private property, clean up to the County's satisfaction and bill the property owner. If the owner can not pay (on a fixed income or an unemployed single mother for example) the County will place a lien on the property. Is this the intention of the BOCC? Have you visited rural eastern Otero County? Do you really want to attack the poor?

Comment: Nowhere does this ordinance touch on the County's responsibilities. The inspectors duties and requirements to perform are not discussed. No county management controls are outlined. Not discussed are the County Manager, County supervisor's requirements to perform. Apparently private property owners must comply with many rules but county inspectors have no such requirements. As I noted above the County already has failed to use existing laws through the Sheriff's office. This failure is a mandamus issue for either the County or the Sheriff take your pick. No one seems to accept their duty to follow existing law. This ordinance, by its lack of controls, just piles on the likely lawlessness.

Finally, this ordinance is obviously very poor. Poorly written, but worse, poorly thought out. It will be bad for property owners and bad for tax payers. It will only be good for the “empire” created within County Government. There are existing laws and an existing Sheriff's office to enforce them. There is a thing called due process. This ordinance will pit tax paying property owners against County Government while addressing a 0.5% (if that) problem, meanwhile alienating 99.5% of the property owners. That is my definition of a poor ordinance.

I ask you to first insist that current laws be enforced. If they are enforced then need for this Draft Ordinance goes away. If this makes work for the BOCC and county employees so be it. The new Sheriff must do his job.

If there is no other alternative and you must have such an ordinance I ask that you involve stakeholders. Letting some bureaucrat have sole input and authorship is poor. You get a dictatorial / autocratic ordinance, which is what you have. Instead put a team together that includes rural property owners, urban property owners, the county attorney and the bureaucrat. Ask this team for a Draft ordinance. You will see a better result I guarantee.

And for God's sake leave out the Fire Safety stuff. This supposed to be about Solid Waste!

Best,



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