COUNTY OF BERNALILLO SCRAP TIRE ORDINANCE

Sec. 14-501. Short title
This article shall be known and may be cited as the “County of Bernalillo Scrap Tire Ordinance.”

Sec. 14-502. Definitions

Illegal dumping means disposal of trash, scrap tires or any solid waste on public or private property that is not licensed or permitted to receive waste.

Person means any individual, partnership, company, corporation, firm, association, trust, estate or legal entity, not including government entities.

Scrap tire means a tire that is no longer suitable for its originally intended purpose because of wear, damage, defect or obsolescence, but does not include a tire that is used as a feedstock for tire derived fuel at a permitted or registered facility that is in compliance with applicable federal, state, and local regulations.

Scrap tire cutter is any mechanical device capable of safely cutting any scrap tire received by any scrap tire generator into at least four (4) pieces within one minute or less and approved by the county manager or designee.

Scrap tire generator means a person who generates or stores scrap tires, including, but not limited to, retail tire dealers, retreaders, scrap tire processors, automobile dealers, automobile salvage yards, private company vehicle maintenance shops, automotive repair garages, service stations, motorcycle or ATV retail or repair shops but does not include persons who generate
scrap tires in a household or beneficial agricultural operations.  \textit{Scrap tire generator permit} is the permit that may be granted by the County pursuant to this ordinance that allows a scrap tire generator to operate in the County for a period of one year.

\textit{Scrap tire hauler} means a person who transports tires for hire for the purpose of recycling, disposal, transformation or use in civil engineering application and is appropriately registered as a scrap tire hauler as required by New Mexico Environment Department.

\textit{Scrap tire self-hauler} means a scrap tire generator who does not contract with a scrap tire hauler, but instead collects and transports its own scrap tires to the municipality solid waste landfill or recycling facility. A self-hauler shall not provide collection and transportation services to someone else for compensation.

\textit{Scrap tire manifest} means a chain-of-custody document containing information required by 20.9.20.50 NMAC and is necessary when transporting ten (10) or more scrap tires in Bernalillo County and the State of New Mexico. A scrap tire hauler and or a scrap tire self-hauler shall not transport scrap tires without possessing a New Mexico scrap tire manifest approved by the New Mexico Department, as required by 20.9.20.8. NMAC.

\textit{Tire-derived fuel} means a low sulfur, high-heating-value derived from tires. Vector means any agent capable of transmitting a disease from one individual or organism to another. Vectors include, but not limited to, mosquitoes, flies and other insects, rodents, and vermin.

Sec. 14-503. Prohibited Act

No person who is a scrap tire generator shall be allowed to operate a business within the unincorporated portion of Bernalillo County unless that person possesses an operational scrap tire cutter on the premises where scrap tires are generated, or can demonstrate that they are in a valid written agreement with a scrap tire hauler to remove the tires or a self-hauler as defined in
this ordinance. Storage of scrap tires must be limited and maintained so that they do not promote harborage of disease vectors or pose fire risk and must be consistent with the requirements of the Comprehensive Zoning Ordinance of Bernalillo County.

Sec. 14-504. -Permit

The County shall issue a scrap tire generator permit to any applicant who meets all of the requirements of this ordinance as determined by the county manager or designee. A permit issued under this ordinance is not transferable nor assignable and may not be sold.

Sec. 14-505. Application

An application for a permit shall be completed and submitted to the county manager or designee. The application shall include:

(a) the name, home address, home phone, business phone, and business address of the applicant;

(b) the type of ownership of the business, i.e., corporation, limited liability company, partnership, sole proprietorship, etc., all officers and agents of the business, and affirm that the applicant is the person or legal entity that will be operating the business;

(c) a description of the scrap tire cutter owned or leased by the applicant; if the scrap tire cutter is not owned by the applicant, a copy of the lease must be included; if using a scrap tire hauler, a copy of the written agreement with the scrap tire hauler must be included; if self-hauling the scrap tires, the application shall include the name, address and phone number of the landfill destination.

(d) a statement describing the physical space on the premises where the applicant intends to place and use the scrap tire cutter;
CONTINUATION PAGE 4, ORDINANCE 2022-8.

(e) such other information as the county manager or designee shall find reasonably necessary to effectuate the purpose of this article and arrive at a fair determination of whether the terms of this article have been complied with;

(f) if approved, and if any of the information contained therein changes, the application shall be updated by the applicant within ten (10) calendar days of such change. Failure to comply with this provision shall be grounds for the suspension and or revocation of the scrap tire generator permit pursuant to this article as well as business registration status pursuant to §§ 14-31 through 14-38 of this ordinance.

(g) if the application is approved, the Scrap Tire generator permit shall be approved for a period of one year.

Sec. 14-506. Duties of Scrap Tire Generators

(a) Every person who is a scrap tire generator who does not meet subsection (d) of this section shall possess and use a scrap tire cutter to cut the scrap tires on any premises in that person’s possession and cut into four (4) or more pieces for lawful disposal or recycling;

(b) Scrap tire generators who do not meet subsection (d) & (e) of this section shall take all reasonable precautions to ensure the safe operation of the scrap tire cutter;

(c) Every scrap tire generator who does not meet subsection (d) & (e) of this section shall have a commercial refuse bin of a size and pickup frequency sufficient for the removal of the cut tires from its premises and that all scrap tires shall be placed in said bin immediately.

(d) Scrap tire generators operating single or multiple locations may use a scrap tire hauler as an alternative to a scrap tire cutter. During a compliance inspection, scrap tire generators shall provide proof of a business contract/agreement with a registered scrap tire hauler as well as copies of manifests to ensure proper recycling or disposal of tires.
(e) Scrap tire self-hauler shall provide proof of the approved landfill destination as well as copies of the manifest to ensure the proper disposal of the scrap tires.

Sec. 14-507. Fee

The County will establish an annual permit fee schedule by resolution.

Sec. 14-508. Investigations and Inspections

(a) Whenever necessary to make an inspection to enforce any of the provisions of this chapter, the county manager or designee may enter any building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the county manager or designee by this ordinance; provided that if such building or premises be occupied, the county manager or designee shall first present proper credentials and request entry; if such building or premises is unoccupied, the county manager or designee shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the county manager or designee shall have recourse to every remedy provided by law to secure entry. Permits may be suspended for failure to comply with the requirements of this ordinance, as well as for violations of other applicable laws or regulations.

(b) Within ten days after receipt of an application as provided herein, the county manager or designee shall cause an onsite inspection to be made of the applicant’s premises and an investigation of the operation.

Sec. 14-509. Appeals

(a) Any party aggrieved by an order or decision granting or denying the scrap tire generator permit under this article may appeal such grievance to the county manager or designee to hear such appeal.
(b) Written notice of such an appeal must be given to the county manager or designee within 30 calendar days after the order or notice of the decision is mailed to the aggrieved party. The notice shall contain an enumeration of the order or decision complained of, the date of the issuance of such order or decision, and a brief statement of the reasons why such practice, order or decision is unlawful, unwarranted, or creates an unnecessary hardship. The 30-day period is jurisdictional and may not be waived.

(c) A hearing shall be held within 30 calendar days after notice of appeal is received. A hearing may be canceled by agreement of the appellant and, if applicable, the party or official who is the subject of an appeal.

(d) Fifteen days’ prior notice of this time, place, and nature of the hearing shall be afforded to all parties. In conducting a hearing, the hearing officer shall afford all parties an opportunity for a full and fair hearing, including right to be represented by counsel, and the right to call and examine witnesses, introduce exhibits and cross-examine witnesses who testify. The hearing shall not be bound by the technical rules of evidence. Notwithstanding the above, the hearing shall be conducted in an orderly manner, and the hearing officer shall exclude all irrelevant, immaterial, and unduly repetitious evidence.

(e) For the purposes of hearing appeals the hearing officer shall have the power to order inspections and to require the submission of such plans and specifications or other evidence, as he or she deems necessary.

(f) On the hearing of an appeal the hearing officer shall have the power to reverse, affirm or amend any order or decision of any official complained of by the aggrieved party.

(g) Within five working days of the completion of the hearing the hearing officer shall issue a written decision memorializing the adjudication of the appeal. Every decision or
opinion of the hearing officer shall be made a part of the official record of the appeal, and a copy of such decision or opinion shall be given to the aggrieved party.

(h) If any party, including the county, feels the hearing officer acted improperly, or that such action as the hearing officer took was arbitrary, capricious or unlawful, said party shall have the right to appeal to the Second Judicial District Court. The hearing officer shall maintain a record of all matters heard before it, and all appeals to the District Court shall be from the record. Said record shall consist of a transcript or digital recording of all testimony taken during the hearing, all exhibits offered, all plans and specifications as may have been required, and a copy of the hearing officer’s decision. The filing of an appeal in the District Court does not itself stay enforcement of the decision of the hearing officer, but the hearing officer may grant, or the District Court may order, such a stay upon appropriate terms.

Sec. 14-510. Suspension and Revocation

(a) The county manager or designee may suspend or revoke any permit issued under this article pending the hearing provided in this section upon the filing of a sworn complaint with such county manager or designee by any citizen, or upon complaint by any peace officer or upon the initiative of the county manager or designee, charging the permittee of having violated any one or more of the provisions of this article. Such suspension shall become effective upon the service on the permittee of notice of such suspension.

(b) The requirements of such service of notice shall be satisfied if personal service of the notice is made or is posted in a conspicuous place upon the permitted establishment. The official serving such notice shall have the authority to remove the permit from the premises and to deliver such permit to the county manager or designee. The county manager or designee shall set a date for a hearing on such complaint which shall be held not more than thirty days, nor less
than ten days after the date of any suspension, unless waived by all parties thereto. The county
manager or designee shall appoint a hearing officer to adjudicate all matters arising from this
section. The notice of suspension or revocation provided for in this subsection, shall specify the
date and time of the hearing. The permittee shall have the right to appear at such hearing and to
produce evidence. If, after holding the hearing, the hearing officer determines that the scrap tire
generator was in violation of any provision of this article, as charged in the complaint, then the
hearing officer shall issue an order either suspending the permit for up to 30 days or permanently
revoking such permit. The permittee shall have twenty days from the date of such suspension of
permanent revocation in which to file notice with the county manager or designee of an appeal to
the county commission from the order of the county manager or designee. The county manager
shall provide for a commission hearing on such appeal at the earliest convenient regular
commission meeting and shall notify the appellant of the date of the commission hearing.

(c) Any acts or omission in violation of this ordinance constitute grounds
for revocation or suspension of a permit issued under this ordinance are also grounds for the
county manager or designee to commence a civil or criminal action for any violation of this
article and seek the penalties provided in § 1-6 of the Bernalillo County Code.

Sec. 14-511. Severability

The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable,
and if any phrase, clause, sentence, paragraph or section of this Code shall be declared invalid,
unenforceable or unconstitutional by the valid judgment or decree of a court of competent
jurisdiction, such invalidity, unenforceability or unconstitutionality shall not affect any of the
remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance.

Sec. 14-512. Penalty
Violations of this ordinance are punishable as provided in § 1-6 of the Bernalillo County Code and by the suspension and/or revocation of the Scrap Tire Generator Permit as provided in this ordinance.

Sec. 14-513. Effective Date

This ordinance shall take effect 90 days after final adoption by the Board of County Commission of Bernalillo County.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BERNALILLO COUNTY, NEW MEXICO this 24th day of May, 2022.

APPROVED AS TO FORM

W. Ken Martinez, County Attorney

BOARD OF COUNTY COMMISSIONERS

Adriann Barboa, Chair

Walt Benson, Vice Chair

Excused

Debbie O’Malley, Member

Excused

Steven Michael Quezada, Member

Charlene E. Pyskoty, Member

ATTEST

Linda Stover, County Clerk