

ORDINANCE NO. 2016-03

AN ORDINANCE REPEALING ORDINANCES 2008-02, 2009-03, and 2011-01 AND REGULATING IMPROPER HANDLING OF FIRE AND OPEN BURNING; ESTABLISHING POWERS OF COUNTY ROAD SUPERINTENDENT, AND PEACE OFFICERS; ESTABLISHING PROVISIONS FOR DECLARING SEVERE FIRE HAZARD RESTRICTIONS AND FIRE DANGER EMERGENCIES AND AUTHORITY TO MITIGATE; ESTABLISHING PENALTIES; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF;

WHEREAS, Curry County has previously adopted Substitute Ordinance No. 2011-01; and,

WHEREAS, the health, safety and general welfare of the residents of Curry County require the establishment of guidelines for the proper handling of fire and the establishment of a procedure for declaring an extreme fire danger emergency to minimize the risk of loss of life and property within the County from wildfires; and,

WHEREAS, the Curry County Commission desires to set forth procedures to address prescribed burns and open burns, and to address wildfire risks and mitigation within its jurisdiction when drought conditions exist; and,

WHEREAS, Section 4-37-1, *et. seq.*, NMSA 2007 provides that the Curry County Commission may adopt ordinances to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morale, order, comfort and convenience of the County and its inhabitants.

NOW THEREFORE, THE BOARD OF COUNTY COMMISSIONERS DOES HEREBY ADOPT THE FOLLOWING:

SECTION 1. REPEAL

Curry County Ordinance No. 2008-02 Titled "An Ordinance Regulating Improper Handling of Fire and Open Burning; Establishing Provisions For Declaring Severe Fire Hazard Restrictions And Fire Danger Emergencies And Authority To Mitigate; Establishing Penalties; Providing For The Severability Of Parts Hereof; Repealing Ordinances In Conflict Herewith; And Providing An Effective Date"; and, Curry County Ordinance No. 2009-03 Titled "An Ordinance Prohibiting Improper Handling of Fire; and Providing Procedures to Declare a Fire Danger Emergency During Extreme Drought Conditions", and Curry County Substitute Ordinance 2011-01 Titled "An Ordinance Regulating Improper Handling Of Fire And Open Burning; Establishing Powers Of County Road Superintendent, And Peace Officers; Establishing Provisions For Declaring Severe Fire Hazard Restrictions And Fire Danger Emergencies And Authority To Mitigate; Establishing Penalties; Providing

For The Severability Of Parts Hereof; Repealing Ordinances In Conflict Herewith; And Providing An Effective Date." be and they hereby are repealed in their entirety.

SECTION 2. DEFINITIONS

CRITICAL FIRE WEATHER CONDITIONS shall be defined as a set of weather conditions, usually involving a combination of low relative humidity and high winds, whose effects on fire behavior make control difficult and threaten the health, safety and welfare of the citizens of Curry County. The Curry County Board of County Commissioners shall, when necessary, following prescribed rules and procedures, establish if and when there are critical fire conditions based on accepted criteria established by the Commission.

FIRE DANGER EMERGENCY shall mean ongoing and continuing fire conditions consisting of severe drought, critical fire weather or other fire hazard factors that pose a significant and extended threat to public health, safety and welfare which require extraordinary action to prevent uncontrolled fires.

INCINERATOR defined by the New Mexico Environmental Division §20.9.2.7(1)(3) means an enclosed devise using controlled flamed combustions, the primary purpose of which is to thermally break down solid waste including, but not limited to, rotary kiln, fluidized bed and liquid injection incinerator, but does not include air curtain incinerators or small animal crematorium.

OPEN BURNING is burning which is conducted out of doors and is not enclosed in an incinerator.

REFUSE shall mean household garbage, trash, rubbish and other forms of household and yard waste.

SEVERE FIRE HAZARD shall mean an immediate situation as determined by the Board of County Commissioners of Curry County, consisting of critical fire weather conditions that make fire control difficult and pose a real and present threat to public health, safety and welfare for a limited time period.

WILDLANDS means any lands covered wholly or in part by timber, brush or native grass.

SECTION 3. IMPROPER HANDLING OF FIRE

- A. It shall be unlawful in Curry County to leave, cause or permit to be left, any fire unattended by any person. Before leaving any fire, such persons in charge of such fire shall thoroughly extinguish the same by completely covering it with dirt, saturating it with water, or otherwise treating it in such a manner to prevent any rekindling of such fire.

- B. Other than the exemptions listed in subsection C, below, it is a violation of this Ordinance for any person to ignite, cause to be ignited, permit to be ignited or suffer, allow or maintain any open fire unless and until the Curry County Sheriffs Department has been notified.
- C. **Unrestricted open burning.** Open burning is permitted for burning;
- 1 in incinerators;
 - 2 refuse, as defined above, in piles or backyard burn barrels;
 - 3 for ceremonial purposes;
 - 4 for barbecuing;
 - 5 for heating purposes in outdoor fireplaces;
 - 6 for noncommercial cooking of food for human consumption; and
 - 7 for warming by small fires.

Any such unrestricted open burn shall be thoroughly extinguished by completely covering it with dirt, saturating it with water, or otherwise treating it in such a manner to prevent rekindling of such fire. Nothing herein shall be interpreted so as to prohibit the burning of smudge pots, or other means utilized by agricultural interests to prevent freeze damage to crops.

- D. **Notification of intended burn.** Prior to any such restricted open burn, a person shall be required to provide advance notice of any such intended burn to the local area fire department by calling (575) 769-1921 and providing the exact location of the same. Notification shall be given prior to each and every anticipated day of burning.
- E. **Restricted open burning.** Other than the exceptions listed in Section 2C, above, all burns shall be conducted only when sustained winds are less than 10 miles per hour, unless an emergency condition exists, such as fires set to abate a fire hazard or a backfire set for the purpose of stopping a fire actually burning.

SECTION 4. CRITICAL FIRE WEATHER CONDITIONS

- A. **Fire danger emergency.** The Curry County Commission may, during declared periods of critical fire weather conditions, severe fire hazards, or during a fire danger emergency, or any combination of conditions that pose a significant and continuing risk of uncontrolled fire, declare a fire danger emergency and prohibit all open fires within the County. In determining these conditions, the Curry County Commission may consider the most current reports issued by the National Weather Center, National Oceanic and Aeronautics Association (NOAA), the Haines Index and/or the US Drought Monitor. The declaration of a fire danger emergency may be done by Resolution duly adopted by the Curry County Commission. The Curry County Sheriff or any authorized peace officer shall enforce the prohibition during the period in which the declaration is in effect. Upon determination that the fire danger has abated, the Curry County Commission shall lift the prohibition.

B. **Authority to mitigate.** When a fire danger emergency has been declared and any fire is sighted, the Curry County Sheriff, County Road Superintendent, Volunteer Fire Department Chiefs, or any authorized peace officer may enter upon private land without a warrant for the sole purpose of determining whether a fire emergency exists. If, in the determination of the County Sheriff, County Road Superintendent, Volunteer Fire Department Chiefs, County Fire and Safety Director or any authorized peace officer, that conditions observed upon private land pose a real and present risk of uncontrolled fire, appropriate action may be taken to extinguish, suppress, or otherwise mitigate the immediate risk. A reasonable attempt to contact the homeowner shall be made prior to entry or before any action is undertaken, unless the health, safety and welfare of the citizens of Curry County may be compromised.

SECTION 5. ENFORCEMENT

For the purpose of enforcing this Ordinance, as well as any resolutions and orders of the Curry County Commission pertaining to this Ordinance or dealing with the subject matter herein, and in particular, severe fire hazards and critical fire weather condition determinations, as well as the laws of the State of New Mexico pertaining to the prevention of fires and protection of the unincorporated area of the County from fire, the Curry County Sheriff and his/her duly authorized agents shall be the chief enforcement officers of this Ordinance. When a critical fire weather condition has been declared, the County Sheriff, County Road Superintendent, any authorized peace officer, or Volunteer Fire Department Chiefs may order an individual to cease and desist from any type of burning or open fire.

SECTION 6. VIOLATIONS AND PENALTIES

Any person who shall violate any of the provisions of this Ordinance, or shall fail to comply therewith, or shall violate or fail to comply with any order made hereunder, shall be punishable by a fine not to exceed three hundred dollars (\$300.00) or by imprisonment for not more than ninety (90) days or both such fine and imprisonment.

Each day that a violation of this Ordinance occurs, shall be considered a separate offense. Notwithstanding any of the foregoing, in the event any person damages property, whether public or private, or causes injury to any person, and such damage or injury is found to have been an element of the violation of any provision of this Ordinance, the District Court or Magistrate Court may, at its discretion, require the defendant to make restitution within a reasonable time, to the victims of said damage or injury.

Nothing in this Ordinance shall prohibit a person from being charged under NMSA 1978, § 19-6-1, *et seq.* and/or §30-17 -1, *et. seq.*, or any federal laws relating to improper handling of fire.

SECTION 7. SEVERABILITY CLAUSE

It is hereby declared to be the intention of the Curry County Commission that the sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be deemed severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

SECTION 8. CONFLICT

Any Ordinances, Resolutions or other Orders in conflict herewith are hereby repealed to the extent of such conflict.

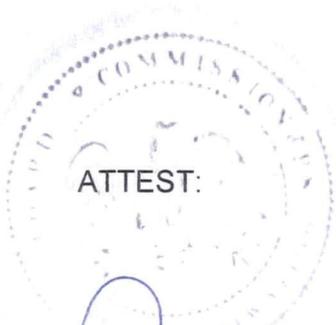
SECTION 9. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after being recorded in the Public Records of Curry County, New Mexico.

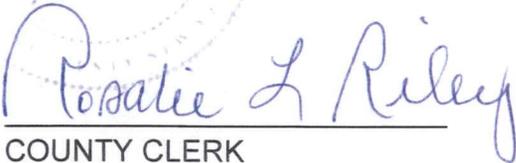
ADOPTED this the 28th day of June, 2016.



Wendell Bostwick, Chairman
Board of County Commissioners



ATTEST:



COUNTY CLERK