

NOTICE OF INTENT

NOTICE IS HEREBY GIVEN to any and all interested persons that pursuant to 4-37-7 of the New Mexico Statutes Annotated, 2007 Compilation, the County Commissioners of Curry County, which is the governing body of and for the County of Curry, State of New Mexico, intends to introduce and consider for adoption at its regular meeting which is scheduled for Tuesday, the 15th day of March, 2011, at the hour of 9:00 a.m., the following described Ordinance, to-wit:

ORDINANCE NO. 2011-01**ADOPTING AN ORDINANCE REGULATING IMPROPER
HANDLING OF FIRE AND OPEN BURNING**

The meeting will be open to the public, and any person or persons interested in the ordinance or the subject matter thereof or any person or persons desiring to comment on the same are urged to attend and be heard.

Copies of the proposed Ordinance are available for review, or copies of the same can be picked up at the County Manager's Office at the Curry County Courthouse, Suite #10, Clovis, New Mexico, during normal and regular business hours, upon request and payment of a reasonable charge for copies, if any are requested.

WITNESS my hand this 1st day of February, 2011.


County Clerk



AFFIDAVIT OF LEGAL PUBLICATION

LEGAL # 69/56

Copy of Publication

STATE OF NEW MEXICO
COUNTY OF CURRY:

The undersigned, being duly sworn, says:
That she is a Legal Clerk of
The Clovis News Journal, a daily
Newspaper of general circulation,
published in English at Clovis,
said county and state, and that the
hereto attached

**NOTICE OF INTENT -
ORDINANCE NO. 2011-01**

was published in said Clovis News Journal,
a daily newspaper duly
qualified for that purpose within
the meaning of Chapter 167 of the
1937 Session Laws of the State of
New Mexico for 2 consecutive
days/weeks on the same days as follows:

First Publication: February 13, 2011
Second Publication: March 6, 2011
Third Publication:
Fourth Publication:
Fifth Publication:

Subscribed and sworn to before me
March 6, 2011

Leslie Nagy

Notary Public



OFFICIAL SEAL
LESLIE NAGY
NOTARY PUBLIC - STATE OF NEW MEXICO

My Commission Expires: May 24, 2011

Legal 6956
February 13, 2011
March 6, 2011

REGULATING
IMPROPER HANDLING OF FIRE
AND OPEN BURNING

NOTICE OF INTENT

NOTICE IS HEREBY GIVEN to any and all interested persons that pursuant to 4-37-7 of the New Mexico Statutes Annotated, 2007 Compilation, the County Commissioners of Curry County, which is the governing body of and for the County of Curry, State of New Mexico, intends to introduce and consider for adoption at its regular meeting which is scheduled for Tuesday, the 15th day of March, 2011, to be held in the Grady Senior Citizens Center, 104 W. Main, Grady, NM at the hour of 9:00 a.m., the following described Ordinance, to-wit:

The meeting will be open to the public, and any person or persons interested in the ordinance or the subject matter thereof or any person or persons desiring to comment on the same are urged to attend and be heard.

Copies of the proposed Ordinance are available for review, or copies of the same can be picked up at the County Manager's Office at the Curry County Courthouse, Suite #10, Clovis, New Mexico, during normal and regular business hours, upon request and payment of a reasonable charge for copies, if any are requested.

WITNESS my hand this 1st day of February, 2011.

ORDINANCE NO. 2011-01

ADOPTING AN
ORDINANCE

Coni Jo Lyman
County Clerk

SUBSTITUTE ORDINANCE NO. 2011-01

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.

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, be it enacted by the Curry County Commission as follows:

SECTION 1. 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 is a 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(l)(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.

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 2. IMPROPER HANDLING OF FIRE

- A. It shall 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 Sheriff's Department has been notified.
- C. **Unrestricted open burning.** Open burning is permitted for burning of refuse in piles or backyard burn barrels and;
 1. in incinerators;
 2. for ceremonial purposes;
 3. for barbecuing;
 4. for heating purposes in outdoor fireplaces;
 5. for noncommercial cooking of food for human consumption; and
 6. 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 3. CRITICAL FIRE WEATHER CONDITIONS

- A. **Fire danger emergency.** The Curry County Commission may during declared periods of extreme drought, ongoing critical fire weather, 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. 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, 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 4. 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 5. 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 6. 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 7. CONFLICT

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

SECTION 8. EFFECTIVE DATE

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

ADOPTED this 15th day of March, 2011.

Caleb Chandler
Caleb Chandler, Chairman
Board of County Commissioners



ATTEST:

[Signature]
COUNTY CLERK