

ORDINANCE NO. 2008-02

AN ORDINANCE REGULATING IMPROPER HANDLING OF FIRE AND OPEN BURNING; ESTABLISHING POWERS OF COUNTY MANAGER, 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 procedure 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

Ashes means fire residue of any kind, including, but not limited to, fireplace ashes, barbecue grill briquettes, wood chips, wood stove ashes, campfire ashes, hot waste, or other material susceptible of spontaneous combustion;

Ashes, hot means any ashes that have not been cooled according to the provisions specified herein;

Critical fire weather 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.

County Road Superintendent shall be the duly appointed person or persons employed or appointed by Curry County with the authority to enforce the provisions of this Ordinance;

Fire danger emergency shall mean ongoing and continuing fire conditions consisting of severe drought, critical fire weather, and 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(I)(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. This includes burning of refuse in piles or backyard burn barrels, yard waste and weed burning, prescribed burning of forest and rangeland, and any other types of outdoor burning;

Recreational burning shall mean any open-air fire, started through any means, utilizing any fuel source, and shall include campfires, bonfires, and the like, where people gather for warmth, cooking and/or fellowship;

Severe fire hazard shall mean an immediate situation 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; and

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 to leave, or 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 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 D, 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:
1. recreational;
 2. ceremonial purposes;
 3. barbecuing;
 4. for heating purposes in fireplaces;
 5. for noncommercial cooking of food for human consumption; and
 6. for warming by small wood fires at construction sites.

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, within twenty-four (24) hours, of any such intended burn to the Curry County Sheriff's Department, by telephone, of the exact location of same. Notification shall be given by each such person prior to each anticipated day of burning.
- E. **Restricted open burning.** Other than the exceptions listed in Section 4D, 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, upon recommendation of the County Manager, 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 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 critical fire weather condition has been declared and any fire is sighted, the County Manager, 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 Manager, 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 home owner will be made prior to entry or 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 and all Orders of the Curry County Commission and 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 duly authorized agents shall be the chief enforcement officers of this Ordinance. When a critical fire weather conditions has been declared, the County Manager, County Road Superintendent, any authorized peace officer, or Volunteer Fire Department Chiefs may order an individual to cease and desist. Failure to comply with a directive to cease and desist when a severe fire hazard or fire danger emergency has been declared shall constitute a distinct hazard to life or property and a citation may be issued.

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 by 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.* or § 30-17-1, *et seq.*, or 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

Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Effective date and repeal

This Ordinance shall take effect thirty days after being recorded in the Public Records of Curry County, New Mexico, at which time Ordinance No. 2008- 02 shall be repealed.

ADOPTED this 6th day of June, 2008.

In their regular meeting of June 4, 2008, the Curry County Commission decided not to adopt Ordinance No. 2008-02.