

MCKINLEY COUNTY
ORDINANCE NO. SEPT-98-077

OPEN BURNING AND UNATTENDED FIRES

AN ORDINANCE PROHIBITING OPEN BURNING AND UNATTENDED FIRES WITHIN MCKINLEY COUNTY; PROVIDING FOR EXEMPTIONS; ESTABLISHING CONTROLS ON THE USE OF OPEN BURNING; SETTING FORTH PROVISION FOR OBTAINING PERMITS; SETTING THE PENALTIES FOR VIOLATION; AND, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of Commissioners of McKinley County find that danger exists to property and human health by unregulated open burning and unattended fires in McKinley County and the burning of refuse creates smoke and noxious odors which drifts into residential and commercial areas adjacent to the City of Gallup, water and sanitation districts, and approved residential subdivisions within McKinley County; and,

WHEREAS, those activities present a clear danger to the health, safety, and welfare of the citizens of McKinley County, along with the costs connected with suppressing and controlling fires.

ACCORDINGLY, be it Ordained by the Board of Commissioners:

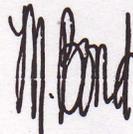
SECTION I: SHORT TITLE

This Ordinance shall be known as the Open Burning and Unattended Fire Ordinance.

SECTION II: DEFINITIONS

For the purpose of this Ordinance, the following terms, phases, words, and derivations shall have the meaning given herein. "Shall" is always mandatory and not merely directory. The masculine includes the feminine. The singular includes the plural, where appropriate.

A. "Open Burning" - means the setting of a fire, or causing or procuring a fire to be set to any inflammable material which is not contained in an incinerator approved by the Regulations of the New Mexico Environment Department or U.S. Environmental Protection Agency.



B. "Unattended Fire" - means allowing fire to escape or spread from the control of the person having charge thereof without using reasonable and proper precautions to prevent the escape thereof.

C. "County" - means McKinley County, New Mexico.

D. "Person" - means any natural person, firm, association, partnership, corporation, company or organization of any kind.

E. "Refuse" - includes, but is not limited to wastes resulting from the handling, preparation, cooking and consumption of food; ashes; cardboard; paper; tin cans; dirt; wood; glass; trash; and crockery.

F. "Yard Waste" - includes, but is not limited to tree branches and other parts of trees; leaves; grass clippings; weeds; and, plant materials.

G. "Buffer Zone" - means the following: an area within three (3) miles of the corporate limits of the City of Gallup; the area within and surrounding one (1) mile of any established Water and Sanitation District; and, the area within and surrounding one (1) mile of any approved residential subdivision.

H. "Volunteer Fire District" - means the certified volunteer fire district where the property is located. If property is not within a district, then "Volunteer Fire District" means the County's Fire and Safety Department.

I. "Department" - means the Environment Department of the State of New Mexico.

SECTION III: PROHIBITED ACTIVITIES

A. Except as otherwise provided in this Ordinance, it shall be prohibited for any person to:

1. Knowingly or intentionally commit or allow "open burning".
2. Knowingly or intentionally commit or allow "unattended fires".
3. Burn any inflammable vegetation, trees, plants, grasses, weeds, or bushes upon any land within a "buffer zone".
4. Knowingly or intentionally burn any "refuse" or "yard waste" within a "buffer zone".
5. Commit or allow "open burning" or start an "unattended fire" upon the lands of another person.

B. A violation of these provisions shall be a petty misdemeanor punished in accordance with Section VII hereof.

SECTION IV: EXEMPTIONS

A. Open burning is permissible without a permit for the following purposes:

1. For recreational purposes (including traditional ceremonies), commercial barbecuing, heating of home by fireplace, the noncommercial cooking of food for human consumption, and for the warming by small wood fires at construction sites.
2. Open burning of natural gas is permitted at gasoline plants and compressor stations and when used or produced in drilling, completion and work over operations on oil and gas wells when necessary to avoid serious hazard to safety.
3. Open burning of explosive materials is permitted where the transportation of such materials to other facilities could be dangerous. Explosive materials shall mean those as defined by the State of New Mexico in statutes or regulations.

B. Subject to whatever conditions the State of New Mexico Environment Department may impose, and/or any conditions imposed by the local Volunteer Fire District or the County's Fire and Safety Department, open burning may be allowed when a permit is obtained. A permit can be obtained from either the Environment Department or the local Volunteer Fire District. The Environment Department or a local Volunteer Fire District may grant a permit for the following purposes:

1. weed abatement;
2. prevention of fire hazards;
3. disposal of dangerous materials (as defined by State statute or regulation);
4. instruction and training of bona fide fire-fighting and fire-rescue personnel;
5. civil defense;
6. conservation;
7. game management;
8. disease and pest control;
9. land clearance for highway construction;
10. forestry management;
11. disposal of fully dried tumbleweeds;
12. control of vegetation in irrigation ditches and canals;
13. clearance and maintenance of watercourses and flood control channels to eliminate flood hazards;
14. disposal of hydrocarbons spilled or lost from pipeline breaks or other transport failure;
15. agricultural management, excluding timber, directly related to the growing or harvesting of crops; and,
16. other special circumstances.
17. if disposal of dried vegetation would tend to overburden any solid waste system(s), then burning is an acceptable alternative.

C. Any open burning permitted under Sections IV-A and B, above must be maintained under the following conditions.

1. the emission of smoke shall not be allowed to pass onto or across a public road or landing strip such that a hazard is created by impairment of visibility;
2. no natural or synthetic rubber or petroleum products may be burned;
3. care must be taken to minimize the amount of dirt on the material being burned;
4. all burning, except recreational, heating and agricultural burning, must take place between the hours of 10:00 a.m. and 4:00 p.m.
5. the material to be burned must be as dry as possible; and,
6. the wind direction at the site of agricultural burning must be such that the smoke will generally be carried away from areas of human habitation and away from any buffer zone.

SECTION V: PERMITS TO CONDUCT AN OPEN BURN

A. Any person seeking a permit to "open burn" shall do so by submitting a request to either the State of New Mexico Environment Department pursuant to the rules and regulations adopted by the Secretary of the Department; or, by requesting a permit form the local Volunteer Fire District pursuant to the terms of this Ordinance. The local Volunteer Fire District has the option of issuing a permit or requiring a person to apply for a State permit from the Environment Department. Any request shall be in writing and shall at a minimum, contain the following information:

1. the requestor's name, address and telephone number;
2. the physical location where the burning is to be conducted;
3. the type and quantity of material to be burned;
4. the date(s) when the burning is to be conducted;
5. the methods that will be followed to ignite, maintain and control the burning;
6. reasons why the requestor believes the burning is necessary; and,
7. the alternatives to burning and the reasons why the requestor believes them not to be feasible.

B. A permit to burn shall not be issued if the local Volunteer Fire District or the New Mexico Environment Department determines that:

1. A practical alternative to burning exists (if any solid waste collection system will become overburdened by dried vegetation, burning or composting of the dried vegetation will be preferred); or,
2. The health or welfare of any other person may be detrimentally affected; or,
3. Ambient air quality of other property may be detrimentally affected.

C. A copy of any permit issued by the Environment Department shall be delivered by the permittee to the local Volunteer Fire District. The local Fire Chief or the County's Fire and Safety Director may review the permit and impose other restrictions on open burning depending on local conditions. The Fire Chief or County's Fire and Safety Director may also cancel an issued permit if he/she determines that any of the conditions listed in Section V(B) above exists. The Fire Chief or County's Fire and safety Director may also change the effective date(s) of any permit if he/she determines that the weather is too dangerous for an open burn to take place on the dates issued.

D. A copy of any permit issued by the local Volunteer Fire Department shall be delivered by the permittee to the Environment Department of the State of New Mexico.

SECTION VI: LITIGATION

The County may enforce the provisions of this Ordinance by civil and criminal actions in court, for the collection of damages, or for other appropriate relief, including injunctive relief.

SECTION VII: PENALTY PROVISION and ENFORCEMENT

A. Any person who violates this Ordinance shall be guilty of a petty misdemeanor and shall be punished by a fine of not more than three hundred (\$300.00) dollars or by imprisonment of up to ninety (90) days in jail or both. Violators shall be issued non-traffic citations. Violators shall receive copies of a citation by personal service or certified mail. Violators shall appear or respond to any citations under this Ordinance in the McKinley County Magistrate Court as provided by New Mexico Law. In addition to the foregoing penalties, any person convicted or found liable hereunder may be assessed the actual cost incurred by the County in suppressing or controlling any fire in violation hereof.

B. This Ordinance may be enforced by the following: Any law enforcement officer having jurisdiction in the County of McKinley; Any code enforcement officer of McKinley County; Any employee(s) of McKinley County authorized by the Board of County Commissioners to issue citations for violations of this Ordinance; and, any Fire Chief of a local Volunteer Fire District.

SECTION VIII: SEVERABILITY

If any of these sections, subsections, sentences, clauses, or phrases of this Ordinance are for any reason found to be unconstitutional, illegal or invalid, the remaining portions of this Ordinance shall not be affected.

SECTION IX: REPEAL

Effective with the enactment hereof, any pre-existing County Ordinances covering the same subject matter as herein described, are hereby repealed. Specifically, Ordinance Number 03-94-055, is hereby repealed.

SECTION X: EFFECTIVE DATE

Pursuant to State law, this Ordinance shall become effective on December 13, 1998, which date is thirty (30) days after adoption by the Board of Commissioners.

PASSED, ADOPTED AND APPROVED THIS 12th DAY OF NOVEMBER, 1998.

**BOARD OF COMMISSIONERS
OF MCKINLEY COUNTY, NEW MEXICO**

Earnest C. Becenti Sr.
Earnest C. Becenti, Sr., Chairperson

Harry H. Mendoza
Harry H. Mendoza, Commissioner

Ben Shelly
Ben Shelly, Commissioner

ATTEST:

Carol K. Sloan fpk
Carol K. Sloan, County Clerk

