



ORDINANCE 04-12-22-FIRE-ORD

Harold M. Garcia
Chair-District 1

Janice C. Varda
Vice-Chair-District 2

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Commissioner-District 4

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Commissioner-District 5

Joy Ansley
County Manager

AN ORDINANCE REGULATING IMPROPER HANDLING OF FIRE AND OPEN BURNING; ESTABLISHING THE POWERS OF COUNTY MANAGER, COUNTY FIRE CHIEF, DISTRICT CHIEFS AND PEACE OFFICERS; ESTABLISHING PROVISIONS FOR DECLARING SEVERE OR EXTREME FIRE DANGER 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 IMMEDIATE EFFECTIVE DATE AND REPEAL OF ORDINANCE 03-09-99-ORD

WHEREAS, the health, safety and general welfare of the residents of San Miguel County, New Mexico, require the establishment of guidelines for the proper handling of fire to minimize the risk of loss of life and property within the County from wildland fires;

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

WHEREAS, this ordinance is enacted pursuant to the authority granted to the San Miguel County Commission by the State of New Mexico §4-37-1 NMSA 1978 for the purpose of promoting safety, health, and general welfare of the public.

SECTION 1 Short Title: This ordinance shall be cited as the "San Miguel County Open Burn Ordinance"

SECTION 2 Applicability: This ordinance shall apply to all lands of the unincorporated area of San Miguel County, to exclude State and Federal owned or managed land.

SECTION 3 Definitions:

"Agriculture/Vegetation burning" is defined as any burning of agricultural products, byproducts or agricultural refuse including, but not limited to: weeds, grass clippings, leaves, conifer needles, bushes, shrubs, trees, and or clippings of bushes, shrubs, trees, including tree stumps (whole or chipped), trees and/or tree limbs, bark, wood waste, unpainted, unstained, un-pigmented, untreated clean lumber, wood chips and/or slabs, millings;

"ashes" is defined as fire residue of any kind, including, but not limited to, cigars, cigarettes, fireplace ashes, barbeque grill briquettes, wood chips, stove ashes, campfire ashes, hot waste, or other material susceptible to spontaneous combustion;

"hot ashes" is defined as any ashes that have not been cooled according to the provisions specified herein;

"critical fire weather" is 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 San Miguel County;

"fire danger emergency" is defined as an 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 the public health, safety and welfare which require extraordinary action to prevent uncontrolled fires;

"open burning" is defined as burning which is conducted out doors and is not enclosed in an incinerator;

"recreational burning" is defined as 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;

"responsible party" is defined as the owner or any premises, whether vacant, improved or unimproved who is responsible for payment of the premises' mandatory taxes and/or fees;

"severe fire hazard" is defined as 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;

SECTION 4 Improper Handling of Fire

- A. Setting fire, or causing or procuring a fire to be set to any inflammable vegetation or forest material, growing or being on the lands of another person and without the permission of the owner thereof.
- B. Allowing fire to escape or spread from the control of the person having charge thereof without using reasonable and proper precaution to prevent such fire from escaping or spreading.
- C. Burning any inflammable vegetation or forest material, whether upon his own land or that of another person, without using proper and reasonable precaution at all times to prevent the escape of such fire.
- D. Leaving any campfire burning and unattended upon the lands of another person, or.
- E. Causing a fire to be started in any inflammable vegetation or forest material, growing or being upon the lands of another person, by means of any lighted cigar, cigarette, match or other manner, and leaving such fire unquenched.

Provided nothing herein shall constitute improper handling of fire where the fire is a backfire set for the purpose of stopping the progress of a fire then actually burning.

Whoever commits improper handling of fire is guilty of a petty misdemeanor.
NMS § 30-17-1

SECTION 5 Disposal of Ashes

- A. It is unlawful to dispose of hot ashes in any manner.
- B. For proper disposal of hot ashes:
 - 1. Cool in place for a minimum of forty-eight (48) hours and inspect to determine that no live embers capable of spontaneous combustion are present; or
 - 2. Extinguish with water and dirt and stir to the point where inspection reveals that no embers capable of spontaneous combustion are present.
 - 3. Cold ashes shall be placed in a bag or other enclosed container before being properly disposed of.

SECTION 6 Open Burning

- A. Other than the exceptions 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, allow or maintain any open fire unless and until a burn permit has been approved.
- B. The burn permit shall be kept by the permit holder at the burn site at all times during the burning operation. Failure to produce a burn permit to any fire or peace officer shall result in appropriate action to extinguish, suppress or otherwise mitigate the open fire.
- C. **Notification of intended open burn;** prior to such restricted open burn, the permit holder shall be required to provide advance notice no less than **72 hours**, of any such intended burn. A burn permit shall be required; the burn permit will outline all the notice details required. At a minimum, the permit holder shall notify the appropriate San Miguel County Fire District, New Mexico State Forestry District, and the appropriate Dispatch Center. (see Appendix A).

All burning with the exception of unrestricted open burning as set forth in section D below shall be banned on days when the National Weather Service has issued a high wind advisory, or Red Flag warning has been issued for any affected portion of San Miguel County.

D. Unrestricted open burning;

The following types of burning are permissible without County review, so long as the burning does not violate any burn restriction imposed under this Ordinance or any State law or regulation and is conducted in a safe manner and does not create a fire hazard.

- 1. Barbeque or cooking fires, including wood, charcoal, propane or natural gas;
 - 2. Fires for heating purposes, small wood fires in containers at homes;
 - 3. Fires ignited by fire personnel in the official discharge of their duties or for training purposes;
 - 4. Recreational fires that is no larger than 3 feet in diameter and have no more than a 3 foot flame length.
- E. **Restriction to open burning:** other than the exceptions listed in section D above, all burns shall be conducted between dawn and dusk, unless an emergency condition exists, such as monitored fires set to abate a fire hazard or a backfire set for the purpose of stopping a fire.

After dusk, all fires with exception of backfires and fire abatement must be completely extinguished, free of embers and heat.

SECTION 7 Prohibited from Open Burning

The following are strictly prohibited from open burning:

- A. It shall be unlawful to burn rubber, plastics, synthetics, or petroleum products;
- B. It shall be unlawful to burn, refuse, garbage, solid waste, or debris whether indoor or outdoor, in barrels, or by any other open fires, including fireplaces, stoves, or containers;
- C. It shall be unlawful to leave any fire unattended by any person;
- D. It shall be unlawful to allow a fire to escape or spread from the control of the person setting fire or having charge thereof;
- E. It shall be unlawful to dispose of hot ashes in any manner.

SECTION 8 Critical Fire Weather Conditions

- A. Severe Fire Hazard Restrictions; The County Manager or County Fire Chief may declare that critical fire weather conditions exist which are favorable to the ignition and rapid spread of uncontrolled fire. Upon such determination, the County Manager or County Fire Chief may impose a temporary restriction on all open burning, permitted or otherwise, except as set forth in Section 6D (1) through (3) until such time as the critical fire weather has abated and the fire hazard reduced.
- B. Fire Danger Emergency; The Board of County Commissioners, upon recommendation of the County Manager or the County Fire Chief, may, during declared periods of extreme or severe 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. In addition, smoking except within an enclosed vehicle, camp trailer, building, developed recreation site or while stopped in an area at least ten (10) feet in diameter that is barren or cleared to mineral soil, and the discharge or use of tracer ammunition or other incendiary device, and cutting, welding, or grinding of metal in areas of dry vegetation are all prohibited activities during a Fire Danger Emergency. The County Fire Chief, District Fire Chief, or designee, with the assistance of any authorized peace officer shall enforce the prohibition during the period in which the declaration is in effect. Upon determination that the Fire Danger Emergency has been abated, the Board of County Commissioners shall lift the prohibition.
- C. Authority to mitigate, critical fire weather conditions exist and any fire is sighted, the County Fire Chief, County Fire Departments, or any authorized peace office may enter upon private land without warrant for the sole purpose of determining where a fire emergency exists. If it is determined that conditions observed upon private land pose a real and preset risk of fire, appropriate action will be taken to extinguish, suppress, or otherwise mitigate the immediate risk. A reasonable attempt will be made to contact the home or property owner, unless the health, safety or welfare of the citizens may be compromised. If the responsible party of the private land upon which fire is sighted threatens, harasses, denies entry or refuses to comply

with emergency services, a citation or or legal action may be necessary by an authorized peace officer.

SECTION 9 Air Quality – Smoke

If during any planned open burning, the responsible person determines that smoke from the burn fall within the category requiring registering their smoke as defined by the New Mexico Environment Department, they shall do so by completing the registration with NM Air Quality Bureau through their smoke management system.

SECTION 10 ENFORCEMENT

For the purpose of enforcing this ordinance and all Orders of the Board of County Commissioners of San Miguel County 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 San Miguel County Sheriff and his duly authorized agents shall be the chief enforcement officer of this ordinance. When critical fire weather conditions exist, the County Fire Chief, District Fire Chiefs, or any authorized peace officer may order an individual to cease and desist, Failure to comply with a directive to cease and desist when 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 by any authorized peace officer.

SECTION 11 Violations and Penalties

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 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 the ordinance shall prohibit a person from being charged under:

NMS § 30-17-1

Improper handling of fire consists of:

- A. setting fire, or causing or procuring a fire to be set to any inflammable vegetation or forest material, growing or being on the lands of another person and without the permission of the owner thereof;
- B. allowing fire to escape or spread from the control of the person having charge thereof without using reasonable and proper precaution to prevent such fire from escaping or spreading;
- C. burning any inflammable vegetation or forest material, whether upon his own land or that of another person, without using proper and reasonable precaution at all times to prevent the escape of such fire;

D. leaving any campfire burning and unattended upon the lands of another person; or

E. causing a fire to be started in any inflammable vegetation or forest material, growing or being upon the lands of another person, by means of any lighted cigar, cigarette, match or other manner, and leaving such fire unquenched.

Provided, nothing herein shall constitute improper handling of fire where the fire is a backfire set for the purpose of stopping the progress of a fire then actually burning.

Whoever commits improper handling of fire is guilty of a petty misdemeanor.

NMS § 19-6-1

Fires on state lands; lighting or leaving; penalty

Any person who shall willfully and maliciously set on fire, or cause to be set on fire, any timber, underbrush or grass upon state lands, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned for not more than two years, or fined in a sum not more than one thousand dollars [(\$1,000)], or both.

SECTION 12 Conflict

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

SECTION 13 Severability

It is hereby declared to be the intention of the Board of County Commissioners that the section, paragraphs, 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 valid judgment of a court competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

SECTION 14 Effective Date

The Board of County Commissioners hereby declares that it is necessary for the peace, health, and safety that this ordinance shall take effect immediately upon passage by the County Commission and being recorded with the County Clerk, at which time Ordinance 03-09-99-ORD shall be repealed.

San Miguel County Burn Permit

Name of Permit Applicant: _____

Organization or Business (if applicable): _____

Mailing Address: _____

City: _____ State: _____ Zip: _____ Phone: _____

Exact Burn Location: _____

Purpose of Burn: _____

Type and Quantity of Material Being Burned: _____

Date of Burn: _____

(NOTE: PERMIT IS ONLY VALID FOR DATE(S) INDICATED)

- Burn permit must be applied for at least 72 hours in advance
- Burning can state at sunrise, and shall be extinguished by sunset
- Permit Applicant shall understand and comply with San Miguel County Burn Ordinance _____
- Permit Applicant shall **not** burn construction material, rubber, plastic, petroleum products, synthetic materials, or household waste.
- Permit applicant shall allow inspection of the site, before, during and after if so requested.
- The permit applicant agrees to pay all costs associated with this burn should the burn escape the control of the permit burn areas listed above.

The permit applicant shall possess a copy of this permit at all times during the burn and produce it for any official who requests to view it.

This burn will be attended by the Permit Applicant and _____ at all times.

The following equipment will be readily available at all times during and after the burn _____

Permit applicant acknowledges the danger of uncontrolled or out-of-control fire may cause, including but not limited to the loss of life, personal injury, and damages and/or destruction of real and/or personal property.

As consideration for issuances of this burn permit, the Permit Applicant hereby assumes and accepts any and all responsibility for any and all consequences from the burn. Permit Applicant acknowledges sole and full responsibility in exercising the utmost care and sound judgment before starting any fire. Per it

Applicant agrees to reimburse San Miguel County for reasonable costs to suppress any fire that escapes the control of the Permit Applicant. Cost is to be determined using criteria established annually by the New Mexico Energy, Minerals and Natural Resources Department, Forestry Division, per San Miguel County Burn Ordinance 04-12-22-FIRE-ORD, Permit Applicant reserve the right to suspend or cancel this burn permit at any time in order to protect the public interest.

As further consideration for issuance of this permit, Permit Applicant hereby agrees, indemnifies, and hold San Miguel County harmless from and against any and all claims, actions, liability, damages, judgments, costs, attorney fees, and expenses of any nature incurred by San Miguel County, any recognized Fire District as a result of the fire started by the Permit Applicant, without which fire, San Miguel County would not be involved in the issuance of a burn permit.

Applicant Signature: _____ Date: _____

Signature indication approval of both the District Fire Chief or designee, and County Fire Chief or designee makes this permit valid.

San Miguel County Fire Chief or designee:

(NAME) _____ (SIGNATURE) _____ Date: _____

San Miguel County District Chief or designee: Fire District: _____

(NAME) _____ (SIGNATURE) _____ Date: _____

Valid Date(s): _____

Permit Applicant shall notify at minimum the following agencies: (dispatch, state forestry, fire district)

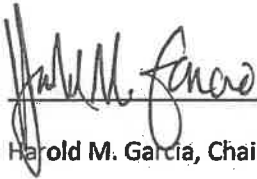
NorCom – Regional Dispatch Center (Las Vegas area) (505) 425-6771

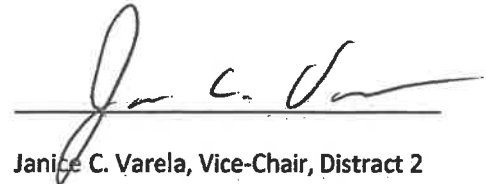
NM State Forestry Division (505) 425-7472

Appropriate Local Fire District

RECC Regional Dispatch Center Santa Fe (Pecos area) (505) 428-3710

Passed and Approved on this 12 day of April, 2022, by the Board of Commissioners of San Miguel County,
New Mexico.


Harold M. Garcia, Chair, District 1


Janice C. Varela, Vice-Chair, District 2


Max O. Trujillo, Commissioner, District 3


Martin Sena, Commissioner, District 4


Kenneth Medina, Commissioner, District 5

ATTEST:

APPROVED AS TO FORM AND

LEGAL SUFFICIENCY:


Geraldine E. Gutierrez
San Miguel County Clerk


Daye Romero Jr.
San Miguel County Attorney

County of San Miguel
State of New Mexico

SAN MIGUEL COUNTY
Pages: 10

I Hereby Certify that this Instrument was filed
for record 06/03/2022 02:37:30 PM and was
duly recorded as Instrument No. 202201911 of the
Records of San Miguel County, NM.

Witness My Hand and Seal Of Office
Geraldine E. Gutierrez

Deputy


County Clerk, San Miguel, NM

