



**OPEN BURNING AND UNATTENDED FIRES
ORDINANCE NO. 2025-JUN-002**

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 finds 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 drift 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.

**THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
COMMISSIONERS OF MCKINLEY COUNTY, NEW MEXICO:**

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.

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A. "Open Burning" - means any manner of burning, whether caused, suffered or allowed, not in a device or chamber designed to achieve combustion, where the products of combustion are emitted, directly or indirectly, into the open air; open burning does not include detonation of manufactured explosives.

B. "Unattended Fire" - means the burning of materials without a person in attendance. This definition shall include, but not be limited to, leaving the property where open burning is occurring, being outside of visual sight of where the open burning is occurring, going indoors while open burning, and leaving a fire before it is fully extinguished.

C. "Campfire" - means a fire set for cooking, warming or ceremonial purposes, which is not more than three (3) feet in diameter by three (3) feet high, and has had the ground five (5) feet from the base of the fire cleared of all combustible material.

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

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

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

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

H. "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.

I. "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;

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C. burning any inflammable vegetation or forest material, whether upon one's 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.
NM Stat § 30-17-1.

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. Knowingly or intentionally commit or allow "improper handling of fire".
4. Burn any inflammable vegetation, trees, plants, grasses, weeds, or bushes upon any land within a "buffer zone".
5. Knowingly or intentionally burn any "refuse" or "yard waste" within a "buffer zone".
6. 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 (campfires, including traditional ceremonies), commercial barbecuing, heating home by fireplace, the noncommercial cooking of food for human consumption, and for the warming by small wood fires at construction sites. Ceremonial fires on Navajo Nation Land should have a permit as required by the Navajo Nation Environmental Protection Agency.
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 the conditions set out in NMAC 20.2.60 Open Burning and NMAC 20.2.65 Smoke Management, and/or any conditions imposed by McKinley County Fire & Rescue, open burning may be allowed when a permit is obtained. A permit can be obtained from McKinley County Fire & Rescue. McKinley County Fire & Rescue 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 loss 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 systems(s), then burning is an acceptable alternative.

C. Any open burning permitted under Section 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

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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, shall be limited to taking place one hour after sunrise until one hour before sunset.
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 requesting a permit from McKinley County Fire & Rescue pursuant to the terms of this Ordinance. Any request shall be in writing on the current McKinley County Fire & Rescue permit application 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 McKinley County Fire & Rescue 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,



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3. Ambient air quality of other property may be detrimentally affected.,
4. Weather and/or drought conditions do not meet safety parameters as determined by McKinley County Fire & Rescue, or
5. There are any Fire Restrictions in place by the State of New Mexico, any U.S. Agency, or Tribal Authority.

C. A copy of any permit issued will be sent to all McKinley County Fire & Rescue Station Captains, Metro Dispatch, McKinley County Office of Emergency Management and any other persons who should be informed. The Fire Chief 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 permitted date(s) as issued.

D. Those wishing to burn on Tribal Lands or in Cibola County must have the appropriate permit and follow all ordinances and resolutions in place in those jurisdictions.

SECTION VI: FIRE RESTRICTIONS AND IMPLEMENTATION

The County may impose the following Fire Restrictions as conditions warrant.

Stage 1: During Stage 1, the following is prohibited AT ALL TIMES:

1. Igniting, building, maintaining, or using a fire, including charcoal and briquettes.
2. Smoking outside (see Exemptions #3 below).

Exemptions during Stage 1:

1. Using a stove or grill that is solely fueled by pressurized liquid petroleum gas (LPG) fuels.
2. Having a campfire within a fire structure that is made of steel or stones.
3. Smoking within an enclosed vehicle or building, or while stopped in an area at least three (3) feet in diameter that is barren or cleared of flammable material.
4. Any Federal, State or Local officer, or member of an organized rescue or firefighting force in the performance of official duty.

Stage 1 Fire Restrictions may be implemented by the County Fire Chief, if the County is in Severe Drought conditions covering 51% or more of the County or other short-term severe weather conditions exist. The restriction may be rescinded as soon as

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conditions improve.

Stage 2: During Stage 2, the following is prohibited AT ALL TIMES:

1. Igniting, building, maintaining, or using a fire, including charcoal and briquettes anywhere in unincorporated McKinley County, including designated developed recreation sites.
2. Smoking outside (see Exemptions #4 below).
3. Blasting, welding, or operating an acetylene or other torch with an open flame outside.

Exemptions during Stage 2:

1. Using a stove or grill that is solely fueled by pressurized liquid petroleum gas (LPG) fuels.
2. Smoking within an enclosed vehicle or building, or while stopped in an area at least three (3) feet in diameter that is barren or cleared of flammable material.
3. Persons operating generators with an approved spark arresting device in an area that is barren or cleared of all overhead and surrounding flammable materials within 3 feet of the generator.
4. Any Federal, State or Local officer, or member of an organized rescue or firefighting force in the performance of official duty.

Stage 2 Fire Restrictions may be implemented by the County Fire Chief, if the County is in Extreme Drought conditions covering 51% or more of the County or other short-term severe weather conditions exist. The restriction may be rescinded as soon as conditions improve.

Stage 3: Total Outdoor Burn Ban.

Stage 3 Restrictions may only be implemented by Resolution of the McKinley County Board of Commissioners, if the County is in Exceptional Drought conditions covering 51% or more of the County or other short-term severe weather conditions exist. The restriction may be rescinded as soon as conditions improve.

Drought Conditions for the County are determined by the National Weather Service.

SECTION VIII: PENALTY PROVISION and ENFORCEMENT

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- 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 employee(s) of McKinley County authorized by the Board of County Commissioners to issue citations for violations of this Ordinance; and, any Officer of McKinley County Fire & Rescue, authorized by the McKinley County Fire Chief.
- C. The County may enforce the provisions of this Ordinance by civil and criminal actions in court, for the collection of damages, or other appropriate relief.

SECTION IX: SEVERABILITY

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

SECTION X: 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 SEPT-98-077 is hereby repealed.

SECTION XI: EFFECTIVE DATE

Pursuant to State law, this Ordinance shall become effective on July 10 2025, which date is thirty (30) days after adoption by the Board of Commissioners.

PASSED, ADOPTED AND APPROVED THIS 10th DAY OF JUNE 2025.

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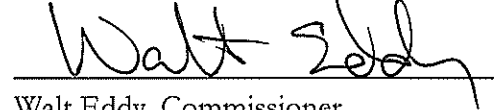
BOARD OF COUNTY COMMISSIONERS
MCKINLEY COUNTY



Robert Baca, Chairperson

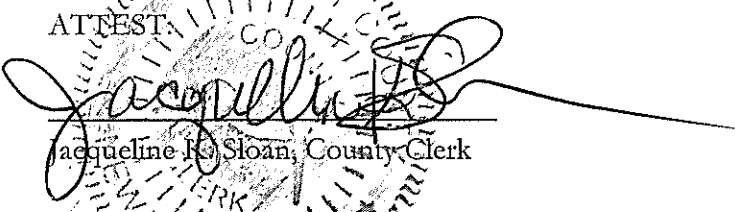


Danielle Notah, Commissioner

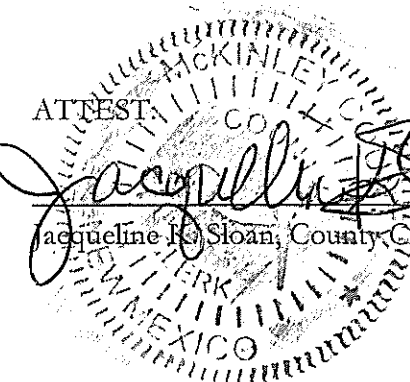


Walt Eddy, Commissioner

ATTEST:



jacqueline K. Sloan, County Clerk



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