



TAOS COUNTY ORDINANCE 2023-4

AN ORDINANCE REPEALING ORDINANCE NO. 2018-3, AND ADOPTING AN AMENDED OPEN BURN POLICY IN TAOS COUNTY

SECTION 1. Authority. This Ordinance is enacted pursuant to the authority granted to the Taos County Commission by the state of New Mexico at §4-37-1, §3-18-11 NMSA 1978 for the purpose of promoting the health, safety, morals and general welfare of the public.

SECTION 2. Short Title. This Ordinance should be cited as the Taos County "Open Burn Ordinance"

SECTION 3. Applicability. This Ordinance shall apply to all lands within the boundaries of Taos County over which The Taos County Board of County Commissioners has Jurisdiction.

SECTION 4. Fire Danger Classification. The Taos County Fire Chief, District Fire Chiefs, and The County Fire Marshal shall collaboratively determine the degree of risk posed by open and containerized burning in Taos County through analysis of the Enchanted Circle Regional Fire Protection Association Wildfire Risk Analysis or a similar analysis, as well as local weather conditions including wind, energy release component, temperature, availability of resources for response, and relative humidity levels.

SECTION 5. Fire Restrictions. The Taos County Fire Chief and/or the Taos County Fire Marshal shall have the authority to enact fire restrictions and/or burn bans within Taos County when weather and drought conditions present an unacceptable risk of loss of life, property, or infrastructure due to the increased risk of fire. Any and all fire restrictions or burn bans will be implemented by the issuance of an official order describing the details of the imposed restrictions. The official order shall be dispersed through media outlets, social media, and physical signage to the residents of Taos County as well as interested agencies. The County Fire Chief or County Fire Marshal shall have the option to implement restrictions in stages or in full effect dependent on the level of fire danger.

- **Stage 1:** Stage 1 shall consist of the halting of the issuance of burn permits. All active burn permits will also be revoked. This stage may be enacted by an individual Taos County Fire District by recommendation of the District Chief and confirmed by the Taos County Fire Chief or Taos County Fire Marshal, or be enacted County wide by the Taos County Fire Chief or Taos County Fire Marshal.
- **Stage 2:** Stage 2 shall consist of restricting the act of open burning to dedicated fire pits and/or commercially available fire containers that are located within an area devoid of all vegetation and combustible items within 30 feet of the fire. The fire shall be limited in size to not exceed flame length of 3 feet. The fire shall not be greater than 3 feet in diameter.
- **Stage 3:** Stage 3 shall restrict and prohibit any and all types of open burning.

Fire restrictions and/or burn bans may be lifted by order of the Taos County Fire Chief and/or the Taos County Fire Marshal once weather conditions and /or drought conditions improve. All Fire Restriction orders will expire 120 days from the date of issuance if not rescinded before that time. A fire restriction may be extended for an additional 120 days if conditions have not improved by the issuance of an extension order given by the Taos County Fire Chief or the Taos County Fire Marshal.

Hot Work Permits: During stage 2 and stage 3 of fire restrictions, commercial businesses that rely on outdoors hot work to conduct normal business may apply for a Hot Work Permit. Hot work is considered Operations including cutting, welding, Thermite welding, brazing, soldering, grinding, thermal spraying, thawing pipe, installation of torch-applied roof systems or any other similar activity. Hot work permits may be applied for at the Taos County Fire Administration Office during normal business hours.

SECTION 6. Prohibitions.

- 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 indoors or outdoors, in barrels or by other open fires. Including fireplaces, stoves or other containers.
- C. It shall be unlawful to leave any fire unattended by any person.
- D. It shall be unlawful to allow fire to escape or spread from the control of the person setting such fire or having charge thereof.
- E. It shall be unlawful to dispose of hot ashes other than in closed fire resistive containers.

SECTION 7. Unrestricted Open Burning. The following types of burning are hereby declared permissible, without County review or permit, so long as the burn does not violate any burn restrictions imposed under this Ordinance or any state law or regulation, is conducted in a safe manner, and does not create a fire hazard:

- A. Barbeque or cooking fires (including wood, charcoal, propane or natural gas);
- B. Fireplace or woodstove fires;
- C. Fires for branding cattle;
- D. Fires for warming (small wood fires in containers at homes or construction sites);
- F. Fires ignited by fire personnel in the official discharge of their duties or for training purposes.
- E. Welding and heating processes involving torches and space heaters.
- F. Recreational fires that are no larger than 3 feet in diameter and have no more than a 3 foot flame length.

SECTION 8. Open Burning Requiring a Permit. The following types of burning are hereby declared permissible once a permit has been approved by the Taos County Fire Chief, Taos County Fire Marshal, or his/her designee and the effected County District Chief or his/her designee as long as the burning does not violate any restrictions imposed by this Ordinance, any state law or regulation, is conducted in a safe manner, and does not create a fire hazard:

- A. Burning of grass, weeds, brush and other ground cover;
- B. Burning of piles of slash, trimmings, or other natural vegetative material;

- C. Burning of scrap wood; (clean wood only, no wood with chemical treatment.)
- D. Prescribed fires for game or forest management purposes on lands which the Taos County Board of Commissioners have Jurisdiction;
- E. Burning for recreational and/or ceremonial purposes in appropriate sites and/or containers.
- F. Recreational fires that are larger than 3 feet in diameter and have more than a 3 foot flame length.

SECTION 9. Responsible Use of Fire. All persons using fire for purposes identified herein, both permitted and non-permitted types of burning are subject to the requirements and regulations of this ordinance and to all state laws and regulations, to maintain full control of any fire that is ignited, and solely assume all legal responsibility to the fullest extent of the law for any and all damage to public and/or private property that results from their failure to adhere to the requirements of this Ordinance or any other state law or regulation. By acceptance of an approved permit, the permittee agrees to and understands the requirements and regulations of sections 10 and 11 of this ordinance; as well as to pay Taos County for reasonable costs to suppress any fire that escapes the control of the permittee. Costs are to be determined using criteria established annually by the New Mexico Energy, Minerals, and Natural Resources Department, Forestry Division.

SECTION 10. Procedure for Obtaining a Burning Permit. The Taos County Fire Chief, Taos County Fire Marshal, or District Fire Chief may issue Burning Permits for fires authorized herein. No permits shall be issued to individuals under the age of 18. Any burn permit that has been denied based on the criteria listed in sections 10 and 11 of this Ordinance are final and cannot be appealed.

- A. Permits may be applied for at the permittee's respective Fire District's Fire Station or the office of the Taos County Fire Chief. All permits must be approved by signatures of the both the respective District Fire Chief or his/her designee as well as the County Fire Chief, Taos County Fire Marshal or his/her designee. Permits lacking both signatures are invalid.
- B. Permits will be issued only to persons or corporations in good standing who provide proof of ownership over the premises or proof of permission by the landowner on which the burn will take place.
- C. Permits must be applied for a minimum of 48 hours prior to the scheduled burn.
- D. The Taos County Fire Chief or the Taos County Fire Marshal reserves the right to revoke a previously issued burn permit in their sole discretion and/or upon the recommendation of the District Fire Chief if safety concerns arise that were unforeseen at the time of issuance. Permittees will be provided notice of revocation via phone by the Taos County Fire Chief or Taos County Fire Marshal.
- E. If at any time that the Fire Danger Class is deemed as Very High or Extreme category by the Taos County Fire Chief and/or the recommendation of the affected District Fire Chief, all permit applications will be denied and no permits will be issued until conditions improve for each respective Fire District.
- F. The permittee must demonstrate an ability to comply with the requirements of section 11 prior to the issuance of a permit.

SECTION 11. Conducting a Permitted Burn. Upon receipt of an approved Burning Permit, the permittee may conduct the burning operation under the following terms and conditions:

A. The Permittee shall be responsible for notifying Taos Central Dispatch prior to ignition of the fire on the day the fire is to be ignited. If local weather or fuel conditions create an unacceptably high risk of an escape as judged by the Fire District Chief, Taos County Fire Chief, or Taos County Fire Marshal the ignition or burn must be halted until such time as conditions improve.

B. The Burning Permit shall be kept on the Permittee's person at the burn site at all times during the burning operation. Failure to produce said permit to any fire or law enforcement official shall result in the permittee being cited for violation of the provisions of this Ordinance.

C. All fires must be attended at all times that the fire is burning. No burns shall be conducted without the presence of the Permittee.

D. The burn shall be conducted in such a way as to avoid smoke obscuring visibility on nearby public roads or public landing strips, avoids interference with the health of nearby residents, and avoids any damage to property of nearby residents or businesses.

E. Permittees shall not burn any material within 200 feet of any residence. If this is not possible, the Permittee must notify all property owners within a 200 foot radius of the proposed burn at least 72 hours in advance and include each owner's permission in writing along with the permit application.

F. All burning must start no earlier than 30 minutes after sunrise and all burns must be extinguished 30 minutes prior to sunset. Unless special approval has been granted in writing by the Taos County Fire Chief or Taos County Fire Marshal.

G. All material to be burned must be in as dry a condition as possible to reduce smoke emission.

H. No burn pile may take place on a burn site larger than 10 x 10 square feet. Any pile larger than must be inspected in person by the District Fire Chief, County Fire Chief, or the County Fire Marshal prior to ignition. If any burn pile is anticipated to be over 1,000 cubic feet in site, the Permittee must present a valid permit from the New Mexico Environment Department along with the permit application.

I. The Permittee shall not burn in the vicinity of any structure, vehicle, fuel tank, live vegetation, electrical wires, or watercourse (except dry acequias).

J. At the time of ignition and throughout the burn the Permittee shall have readily available a water source such as a 5 gallon bucket filled with water and/or garden hose to extinguish the fire; and, at least one hand tool such as a 5 pound fire extinguisher, shovel, pick axe, or rake.

K. The permittee shall have one other person in attendance of the burn if the burn is 100 feet or closer to any structure.

SECTION 12. Prosecution of Violation. Violations under this section may be commenced by the issuance of a citation charging the violation to the Permittee. Citations may be issued by an officer of the Taos County Sheriff's Department, the Taos County Fire Marshal or his/her deputies, or the Taos County Fire Chief.

SECTION 13. Enforcement. It shall be unlawful to violate these regulations. Any person, firm, corporation or other entity violating this Ordinance shall be subject to the criminal and civil penalties or remedies as provided herein:

A. Remedies Available to Taos County for Violation of Ordinance

1. Criminal Violation.

- a. Violation of any provision of this ordinance is a petty misdemeanor punishable by a fine not to exceed three hundred dollars (\$300.00) or imprisonment for ninety (90) days or both the fine and imprisonment. Each day of such failure to respond shall be deemed a separate offense.

2. Civil Penalties.

- a. Injunction. Taos County shall have the right to seek an injunction to restrain, correct, or abate any violation of the regulations and to perform any act necessary for compliance, or to remediate any condition not in compliance with the regulations.
- b. Damages, including but not limited to costs of abatement.

3. Administrative Sanctions.

- a. Withholding Burning Permits. The County Fire Chief, County Fire Marshal or District Fire Chief may withhold or deny burning permits for a premises at which a notice of violation has been issued, unless the violation is timely corrected. The County may require correction of the violation as a condition of issuance of permits. This remedy shall apply regardless of whether or not the applicant for the permit is the person responsible for the uncorrected violation.
- b. Cease and Desist Orders. The County may order a burn halted on any land upon which there is a violation of a provision of this Ordinance or of a permit issued hereunder, through issuance of a cease and desist order. All work shall immediately halt and cease upon issuance of such order.

4. Authorization to Bring Action. The Taos County Sheriff's Department, the Taos County Fire Marshal, the Taos County Fire Chief, or the County Attorney or their designee is hereby authorized to bring any criminal or civil action authorized herein or under state law.

5. Nonexclusive Remedies. These remedies are cumulative and in addition to any other remedies available to Taos County pursuant to law.

SECTION 14. Effective Date. The Board of County Commissioners hereby declares that it is necessary for the public peace, health, and safety that this Ordinance take effect immediately upon passage, due to the drought conditions of recent years and increased fire danger.

THEREFORE, BE IT RESOLVED that the Taos County Board of Commissioners approves Ordinance 2023-4 and the repeal of Ordinance 2018-3.

PASSED, APPROVED AND ADOPTED, this 7th day of November, 2023.

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

by J.R. Bob Romero
Anjanette Brush, Chairperson

Attest:

Valerie Montoya by Tammy M. Autio
Valerie Montoya, Taos County Clerk Deputy Clerk

VOTE RECORD:

FR Bob Romero	<u>yes</u>	no	abstain	absent
M. Romero Jr.	<u>yes</u>	no	abstain	absent
D. Vigil	<u>yes</u>	no	abstain	absent
A. Brush	<u>yes</u>	no	abstain	absent
R. Mascareñas	<u>yes</u>	no	abstain	absent

Approved as to legal form:

Randy M. Autio
Randy M. Autio (Nov 13, 2023 15:32 MST)

Randy Autio, Contract County Attorney

