

FIRE PREVENTION CODE
OF COLFAX COUNTY

ORDINANCE NO. _____

**AN ORDINANCE ESTABLISHING THE POSITION OF
COLFAX COUNTY FIRE MARSHAL, AUTHORIZING BURN
RESTRICTIONS AND ADOPTING NATIONAL FIRE
SAFETY CODE CONCERNING OPEN FIRES
AND OTHER MATTERS.**

WHEREAS, the Board of Commissioners of Colfax County, New Mexico (County) desires to protect the health, safety and welfare of all persons in Colfax County; and

WHEREAS, the County desires to protect the persons and property located in the County from hazardous conditions arising from fires, through the establishment of the position of Colfax County Fire Marshal; and

WHEREAS, the County desires to protect the persons and property located in the County from hazardous conditions arising from fires, through restrictions on open fires, the issuance of burn permits, and the collection of fees relating to burning in the County; and

WHEREAS, the County desires to protect the persons and property located in the County from hazardous conditions arising from fires, through the adoption and enforcement of provisions of the National Fire Safety Codes, Uniform Fire Code, 2003 Edition, NFPA 1; and

WHEREAS, the New Mexico Environment Department has issued its air quality regulation for open burning (10.2.60 NMAC), effective December 31, 2003, which provides, in part, that permits for open burning from the Environmental Department are no longer required as part of the permitting process; and

WHEREAS, the County desires to adopt and enforce portions of the National Safety Codes to guide its enforcement activities; and

WHEREAS, the County desires to require all persons within the County to acquire a County issued permit prior to commencing open burning in the County; and

WHEREAS, it is necessary to provide a penalty for the violation of this ordinance,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF COLFAX COUNTY, NEW MEXICO that:

SECTION 1. COLFAX COUNTY FIRE MARSHAL. The Board of Commissioners of Colfax County, New Mexico does hereby establish the position of Colfax County Fire Marshal, who shall act under general direction and guidance of the Colfax County Manager, shall manage all aspects of the Fire Marshal's office including education, enforcement, inspections, investigations and other related Functions with the support of all Colfax County Fire Districts, subject to the Board of Commissioners of Colfax County making necessary appropriations for the same. The duties and responsibilities of the Colfax County Fire Marshal (Fire Marshal) shall be established by Resolution duly adopted by the Board of Commissioners of Colfax County and as such Resolution may from time to time be amended.

SECTION 2. RESTRICTION AND LIMITATIONS ON OPEN BURNING. The Board of Commissioners of Colfax County, New Mexico does hereby adopt the following restrictions and limitations concerning Open Fires, Incinerators, and Commercial Fireplaces, to-wit:

2.1. Open Fires, Incinerators, and Commercial Fireplaces.

(1) All persons shall be required to obtain a permit from Colfax County in accordance with this ordinance, prior to conducting open burning or prior to kindling or maintaining an open fire in Colfax County, New Mexico; provided, however, permits shall not be required for cooking or recreational fires. The permit fee amount shall be determined by the County Commission by the passage of a resolution and may from time to time be amended or adjusted.

(2) Where burning is conducted on public property or the property of someone other than the permit applicant, the permit applicant shall demonstrate that permission has been obtained by the appropriate government agency, the owner, or the owner's authorized agent.

(3) When limits for atmospheric conditions or hours restrict burning, such restrictions shall be designated in the permit restrictions.

(4) Any person receiving a permit from Colfax County shall adhere to all restrictions, conditions, instructions, or stipulations of such permit.

2.2. Open Fires

(1) Permitted Open Fires shall be located not less than 50 feet from any structure.

(2) Burning hours shall be prescribed by the Fire Marshal in consultation with the District Fire Chief or Chiefs for the Fire District or Districts for which such permit is issued.

(3) Recreational fires shall not be located within 25 feet of a structure or combustible material.

(4) Conditions that could cause a fire to spread to within 25 feet of a structure or combustible material shall be eliminated prior to ignition.

(5) All open fires and cooking fires shall be constantly attended by a competent person until such fire is extinguished. This person shall have a garden hose connected to a water supply or other fire-extinguishing equipment readily available for use.

(6) The Fire Marshal or District Fire Chief in whose district the permit was issued shall have the authority to revoke such permit or to prohibit any or all open fires when atmospheric conditions or local circumstances make such fires hazardous.

(7) During that period of the year declared by the Fire Marshal, based on fire indices, to be the dry season, it shall be unlawful to set fires to any brush, forest-covered or grass covered land. The Fire Marshall may make a dry season declaration on a district by district basis. A dry season declaration can be made, modified or revised by an action of the Colfax County County Commission.

(8) On such occasions when the Fire Marshal declares a dry season and establishes a ban on the use of any form of fire or smoking material, the Sheriff of Colfax County or any duly commissioned Colfax County Sheriff's Deputy shall have the authority to issue a criminal citation in the enforcement of such ban.

(9) For other than one and two family dwellings, no hibachi, gas fired grill, charcoal grill, or other similar devices used for cooking, heating, or any other purpose, shall be used or kindled on any balcony or under any overhanging portion or within 10 feet of any structure. Underwriters Laboratory (UL) listed electric ranges, grills, or similar electrical apparatus shall be permitted.

(10) Every commercial incinerator and commercial barbeque fireplace shall be equipped and maintained with a spark arrestor and shall be maintained in good condition, working order, and repair at all times.

(11) The Fire Marshal or District Fire Chief shall be authorized to require any fire to be immediately extinguished if the fire is determined to constitute a hazardous condition.

(12) The provisions of this section concerning open fires, permits, and restrictions on burning

shall be interpreted with reference to Uniform Fire Code, 2003 Edition, NFPA 1, Section 10.11.

SECTION 3. PERMITS.

Permits authorizing burning within Colfax County may be issued by the Fire Marshall in consultation with the District Fire Chief or Chiefs for the location where the applicant proposes to ignite such fire. The County District Fire Chief of the district in which the permit in question is to be issued shall coordinate with the County Fire Marshal's office. The application, permit and permit fee for burning within the County shall be in the form and in the amount that the Board of Commissioners of Colfax County, New Mexico shall authorize and establish by resolution.

SECTION 4. DEFINITIONS.

4.1 Wherever the words "Fire Marshal" is used in this ordinance, such words shall mean the Colfax County Fire Marshal.

4.2 Wherever the words "District Fire Chief" or "District Chief" are used in this ordinance, such words shall mean the District Fire Chief who is elected for a Fire District of Colfax County by the members of that District Fire Department personnel and who is approved by the Colfax County Board of Commissioners.

4.3 Wherever "Cooking Fire" is used herein, it shall mean the non-commercial, residential burning of materials not exceeding 3 ft. in diameter and 2 ft. in height, other than rubbish in which the fuel burned is contained in an outdoor fireplace, a barbecue grill, or a barbecue pit for the purpose of preparing food.

4.4 Wherever "Recreational Fire" is used herein, it shall mean the non-commercial burning of materials other than rubbish for pleasure, religious, ceremonial, cooking, or similar purposes in which the fuel burned is not contained in an incinerator, a barbecue grill, or a barbecue pit, and the total fuel area is not exceeding 3 ft. in diameter and 2 ft. in height.

SECTION 5. ADOPTION OF ADDITIONAL PROVISIONS OF NFPA 1.

When the Board of Commissioners may determine that it is necessary in order to protect the health, safety and welfare of persons and property located in the County, it may by Resolution adopt such additional and further provisions of the National Fire Safety Codes, Uniform Fire Code, 2003 Edition, NFPA 1 that it may deem necessary to protect such persons and property within Colfax County.

SECTION 6. ENFORCEMENT AND DUTIES OF THE COLFAX COUNTY FIRE MARSHAL.

This ordinance shall be enforced by the Sheriff of Colfax County or the Sheriff's duly commissioned deputy.

SECTION 7. APPEALS.

Whenever the Fire Marshal disapproves an application or refuses to grant a permit hereunder, or when it is claimed that the provisions of this ordinance do not apply or that the true intent and meaning of this ordinance have been misconstrued or wrongly interpreted, the aggrieved applicant may appeal from the decision of the Fire Marshal to the Board of Commissions of Colfax County, New Mexico within thirty (30) days from the date of the decision appealed.

SECTION 8. PENALTIES.

8.1 Any person who violates any of the provision of this ordinance, fails to comply with any ban on burning adopted by the County, who violates or fails to comply with any ban on burning made by the Fire Marshal pursuant thereto, who fails to obtain a required permit prior to igniting a fire in Colfax County, who fails to comply with an order as affirmed or modified by the Board of Commissioners of Colfax County following appeal, or who fails to comply with an order concerning this ordinance by a court of competent jurisdiction, shall severally for each and every such violation and noncompliance, respectively, be guilty of a petty misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00). The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects upon notification.

8.2 The application of the above penalty shall not be held to prevent the enforced extinguishments of prohibited fires.

SECTION 9. SEVERABILITY.

It is the intent of the Board of Commissioners of Colfax County, New Mexico that each and every provision of this ordinance is independent and severable of and from every other, unless the contrary is expressly provided in this ordinance, and, therefore, if any provision of this ordinance should ever be declared or held by any court of competent jurisdiction to be unconstitutional, invalid, or of no force and effect, for any reason, then such decision, ruling or holding shall apply only to, and be limited to, such severable provision of this ordinance upon which such court has expressly ruled, and such decision, ruling or holding shall not affect the validity of the remaining provisions of this ordinance.

NOW, THEREFORE, by virtue of the power vested in us as duly elected members of the Board of County Commissioners of Colfax County, New Mexico, under the Laws of the State of New Mexico, we do hereby approve, ratify, adopt and promulgate this ordinance as the "Fire Prevention Code of Colfax County" and authorize and direct the Colfax County Clerk to file, record and publish such ordinance as required by law.

Done in open meeting this _____ day of _____, 2006.

BOARD OF COMMISSIONERS
OF COLFAX COUNTY, NEW MEXICO

Charles B. Gonzales, Chairman

James B. Marchietti, Vice Chairman

William H. Conley, Commissioner

ATTEST:

Rayetta LeDoux, Clerk of the Board