

TOWN OF EDGEWOOD

Fire Ban Ordinance

Ordinance No. 2011-03

Be it ordained by the Governing Body of the Town of Edgewood, the following:

Proclaiming hazardous fire conditions and severe or extreme drought conditions in the Town of Edgewood (*hereinafter* referred to as the Town) that endanger the health and safety and welfare of the citizens; imposing restrictions and establishing penalties on the use of fireworks, open fires and smoking within the Town; and declaring an emergency.

Section 1. Definitions:

For purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein:

AERIAL FIREWORKS DEVICE: Any device, that upon ignition, propels itself or an insert more than eight (8) feet into the air.

GROUND AUDIBLE DEVICE: Any fireworks intended to function on the ground that produce an audible effect. This includes, but is not limited to, firecrackers of any type and size, cherry bombs, M-80s, and other exploding devices and any device producing a loud report, whistle or shriek.

OPEN FIRE: Any manner of burning, not in a device or chamber, designed to achieve combustion, where the products of combustion are emitted, directly or indirectly, into the open air.

PERSON: Any individual, firm, partnership, corporation, association, or any other entity owning, operating, controlling or occupying or inhabiting any house, residence, shop establishment, or other premises within the corporate limits of the Town.

PREMISES: Any property within the Town, including but not limited to, business places, apartment houses, offices, theaters, hotels, residences, cafes, restaurants, eating places, tourist facilities, hospitals, schools, vacant lots and any other places or locations within the Town limits where flammable or combustible materials may accumulate.

WILDLANDS: Area including lands covered wholly or in part in timber, brush, grass, grain or other flammable vegetation.

Section 2. Purpose and Authority:

- A. Pursuant to Section 3-18-11, NMSA 1978, as amended, the Council, during certain periods of time, when the conditions of fire hazard exists, may declare this ordinance enforceable by resolution. Any activity that could potentially cause a fire is hereby prohibited by posting of said resolution. Such resolution, when adopted, shall be prominently posted in at least six (6) public places in the Town, including the fire department, the Town offices, and shall be effective immediately upon such posting, and shall remain in effect until such resolution is either rescinded or superseded by another resolution of the governing body. No further notice shall be required to charge a violation of this section.
- B. Pursuant to the Towns' powers and duties to adopt regulations for the prevention of fire and regulate the use of illuminating flames and bonfires found in Section 3-18-11, the Town shall monitor the fire danger in the Town and the surrounding wilderness areas. When the fire danger is such that the use of open flames or fires would create an imminent danger to citizens, visitors or property, the Town shall issue a notice, which imposes a ban on open fires and the use of fireworks in the Town. The notice shall be posted in at least six (6) public places in the Town, including the fire department, the Town offices, and shall be effective immediately upon such posting.
- C. Pursuant to Section 3-18-11, NMSA 1978 and Section 60-2C-8.1, NMSA 1978, as amended, the Council is authorized to ban the sale and use of all fireworks within the boundaries of the Town that are ground audible devices or aerial fireworks devices, including but not limit to aerial spinners, helicopters, mines, missile type rockets, roman candles, shells, stick type rockets, chasers and firecrackers. Furthermore, the Council is authorized to ban the use of all fireworks in wildlands.
- D. Pursuant to Section 3-11-4, NMSA 1978, the Mayor of the Town may declare the fire hazard in the Town an emergency, because if not addressed immediately, such fire hazard will likely result in injury or damage to persons or property and substantial financial loss in the Town.

Section 3. Findings:

- A. The rapidly escalating danger of range fires, grass fires, forest fires, and structure fires is extremely high in and around the Town.

- B. The weather in the Town has been extremely dry and windy, contributing to the present high fire risk, and it is predicted that the hot and dry weather will continue into the coming weeks, causing progressively worsening fire conditions.
- C. Due to extremely low winter precipitation, United States Forest Service data indicate severe and extreme fire danger presently exists throughout the Town and surrounding areas. In addition, it is anticipated that severe drought conditions will be present.
- D. The probability of ignition of materials likely to serve as fuel for the fire is presently extremely high in and around the Town.
- E. Should the Town experience a fire that burns out of control in wilderness areas, the flora and fauna in protected areas are at great risk of sustaining devastating loss and/or destruction.
- F. Should the Town experience a fire that burns out of control in populated areas, it may be necessary to evacuate and relocate affected residents of the Town.

Section 4. Prohibitions:

The Council therefore proclaims that an emergency situation currently exists within the Town, that the dry conditions and high fire hazard represent a significant and immediate threat to the safety, health, and welfare of the citizens of the Town, and that drought conditions are likely to be present. Therefore, the following are prohibited within the Town of Edgewood:

- A. Open burning, i.e. burning of cropland, fields, rangeland, debris burning, and slash piles, and prescribed burning or weed burning, is prohibited. Campfires are prohibited unless the cooking or heating devices use kerosene, white gas or propane as a fuel, and are located in a developed campground that is cleared of flammable vegetation for at least 30 feet or has a water source, or areas designated in writing by the Town fire chief. Charcoal grills and wood and coal stoves with yards associated with a residence or on the premises of a business are permitted.
- B. It shall be unlawful within the Town limits for any person to intentionally cause, create, tend or allow an open fire of any type, except a barbeque fire in an approved gas or charcoal grill manufactured specifically for that purpose.
- C. Except for welding or soldering torches or other similar hand held tools or equipment, it shall also be unlawful, during the ban, for any person to cause or create any type of open flame or spark that emanates more than four (4) inches from the source.

- D. Outside smoking is restricted to designated and equipped areas, within structures or within vehicles equipped with ashtrays. Open campfires and campfires are restricted to developed campgrounds or areas designated in writing by the Town Council. Any discarding of lit or unlit cigarettes will be in violation of this section.
- E. Use of trail bikes, chain saws and off-road vehicles and motorbikes (i.e. ATV's) within campgrounds, wild lands, and other public areas, including but not limited to any forest areas, is prohibited.
- F. The issuance of licenses or permits for burning to any person is strictly prohibited.
- G. The use of any aerial fireworks device within wildlands is strictly prohibited.
- H. Exemptions: Exempt from this section is any federal, state, local officer or member of a public safety organization or firefighting force doing any act prohibited herein in the performance of an official duty.

Section 5. Severe Drought Prohibitions:

In the event the National Weather Service maps and indices show extensive or severe drought conditions exist, then the following restrictions for all fireworks not otherwise prohibited by ordinance shall be imposed: use of fireworks shall be limited to areas that are paved, barren, or that have a readily accessible source of water for use by the homeowner or the general public.

Section 6. Review of Fire Dangers; Ban Lifted:

- A. Once the ban is in place, the town administrator or designee shall review the fire danger within sixty (60) days of the date of the ban to determine whether the fire danger has subsided.
- B. The ban shall be automatically lifted at midnight of the sixtieth (60th) day unless the town administrator or designee determines, within the sixty (60) day period, that the ban should remain in effect. Each separate determination begins another sixty (60) day period.
- C. The town administrator or designee can lift the ban at any time he or she determines that the danger has subsided.
- D. The town administrator or designee shall prominently post notice of any extension of the ban in six (6) public places in the Town, which shall include the fire department, the Town offices. The extension shall be effective upon posting.

- E. Appeals: Any aggrieved person may appeal the town administrator's finding to the Town council. Such appeal shall be in writing and filed with the Town clerk no later than two (2) business days after posting, and will be decided at or before the next regularly-scheduled Council meeting. Any ban that is appealed shall remain in effect during the pendency of an appeal.

Section 7. Exceptions:

- A. Nothing within this ordinance shall prohibit public displays of fireworks as defined in Section 60-2C-9 NMSA 1978, so long as those displays are in strict conformance with the requirements and condition for public displays as set forth in that ordinance and as approved by the Town administrator.
- B. Nothing in this ordinance shall prohibit the use of charcoal in closed containers or liquefied petroleum gas barbeque grills in closed containers used for cooking purposes.
- C. Nothing within this ordinance shall be construed as prohibiting individuals from smoking in areas where smoking is not otherwise prohibited. Smoking shall continue to be permitted in areas not otherwise designated as non-smoking and in other public areas not prohibited by this ordinance.

Section 8. Enforcement:

Any Town police officer or code enforcement officer, shall issue a citation and cause a complaint to be filed in municipal court upon observing burning within the Town, if such is prohibited by this ordinance or if the person committing or permitting the burning does not have the proper permits and approval to do so as required by this chapter, or the performing or permitting to be performed any act prohibited by this ordinance.

Section 9. Violation; Penalties:

Violation of this section is misdemeanor. Any person found violating this ordinance shall, upon conviction, be subject to a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not exceeding ninety (90) days or both. Each separate violation shall constitute a separate offense and each day of violations shall constitute a separate offense.

Section 10. Severability Clause:

If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Governing Body hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause,

word or phrase thereof, irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 11. Emergency Effective Date and Term:

- A. This ordinance deals with an emergency hereby declared by the Governing Body, and the Mayor to be an immediate danger to the public health, safety, and welfare of the Town. This ordinance, immediately upon its final passage shall be published one time by title and a general summary shall take effect immediately after publication.
- B. This ordinance shall remain in effect for a term as provided for by Section 6 of this ordinance.

PASSED BY THE GOVERNING BODY OF THE TOWN OF EDGEWOOD, NEW MEXICO,
THIS 6th DAY OF July, 2011.



MAYOR ROBERT STEARLEY

ATTEST:



ESTEFANIE MULLER
TOWN CLERK-TREASURER