

ORDINANCE NO. 18 - 2017

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ARCHULETA, STATE OF COLORADO**

**AMENDED AND RESTATED ORDINANCE NO 18-2017 FOR THE REGULATION OF
OPEN BURNING IN THE UNINCORPORATED AREAS OF ARCHULETA COUNTY**

WHEREAS, the Board of County Commissioners of the County of Archuleta (Board), pursuant to C.R.S. §30-11-107(1)(a) and 30-15-401, *et seq.* has the general enabling power to adopt ordinances, resolutions, rules and other regulations as may be necessary for the control or licensing of those matters of purely local concern, and to do all acts which may be necessary or expedient to promote the health, and welfare of the citizens of Archuleta County; and

WHEREAS, pursuant to C.R.S. §30-15-401(1)(n.5), the Board has specific authority to adopt an ordinance establishing an open burning permit system for the purpose of authorizing and regulating open burning as one of the many methods of safely disposing of slash and to adopt an ordinance banning open fires to a degree and in a manner that the Board deems necessary to reduce the dangers of wildfires within those portions of the unincorporated areas of the County where dangers of forest or grass fires is found to be high; and

WHEREAS, in the event a slash pile burn implicates County land use and zoning laws, permit applicants and grantees shall be subject to the Archuleta County Land Development Code; and

WHEREAS, the Board does not waive its authority to make determinations based on competent evidence, under Colorado Statute or this ordinance, by way of delegations contained herein; and

WHEREAS, the Board will review this ordinance once annually, at a regularly scheduled Board meeting, to determine whether authority delegated hereunder is being appropriately administered; and

WHEREAS, the Board encourages special districts having fire jurisdiction to provide education to citizens about the use of fire as a tool; and

WHEREAS, C.R.S. §30-15-405, provides that except for ordinances calling for special elections or necessary to the immediate preservation of the public health or safety and containing reasons making the same necessary, such ordinances shall not take effect and be in force before thirty days after they have been so published; however, an excepted ordinance shall take effect upon adoption; and

WHEREAS, the Sheriff of Archuleta County is authorized under the provisions of C.R.S. §30-10-512 and C.R.S. §30-10-513, to act as fire warden of the County in case of wild fire, and to assume charge or assist other governmental authorities in controlling or extinguishing wild fire; and

WHEREAS, the Sheriff has appointed a Sheriff's designee to act on his behalf in matters relating to fire prevention and fire control in Archuleta County; and

WHEREAS, open fires and open burning can be a prime cause of wild fire in Archuleta County; and

WHEREAS, pursuant to C.R.S. §32-1-1002(3)(a), *et seq.* the Chief of each Fire Protection District has authority over the supervision of all fires within the district; and

WHEREAS, the Colorado Division of Fire Prevention and Control has established Slash Pile Burning guidelines; and

WHEREAS, the Board finds that competent evidence has been presented indicating that the danger of wild fire in Archuleta County is periodically high, and therefore it is necessary to the preservation of the public health, safety, and welfare of the citizens of Archuleta County to impose restrictions on all open fires and open burning within the unincorporated areas of Archuleta County; and

WHEREAS, the Board has determined that it is in the best interest of expedient and efficient government to amend the ordinance to allow for a different procedure for the County to engage in an Memorandum of Understanding with certain property owners to accomplish the same purposes of the Original Ordinance; and

WHEREAS, the Board has determined that such a Memorandum of Understanding procedure as is being incorporated by way of this Amendment will best serve the health, safety and welfare of all citizens of Archuleta County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARCHULETA, STATE OF COLORADO THAT ORDINANCE NO. 18-2017, BE AMENDED AND RESTATED IN ITS ENTIRETY AS FOLLOWS:

Section 1. Incorporation

The foregoing findings are incorporated herein.

Section 2. Title

This Ordinance shall be known and referred to as the "Amended and Restated Archuleta County Open Fire and Open Burning Restriction Ordinance," and may be cited and referenced as such.

Section 3. Purpose

The purpose of this Ordinance is to preserve and protect the public health, safety, and welfare of the citizens of Archuleta County, Colorado, by restricting open fires and open burning in the unincorporated areas of Archuleta County during times of high fire danger and to provide a permitting or contract system that will (1) allow and regulate open and safe burning of slash; (2) inform persons of considerations for the appropriate, safe, and effective use of fire as a tool; and (3) reinforce knowledge of local requirements of homeowner associations, special districts having fire jurisdiction, and county ordinances to increase public awareness and protect the public health, safety, and welfare.

Section 4. Authority

This Ordinance is authorized by, *inter alia*, generally, C.R.S. Part 1 of Article 11 of Title 30, and Part 4 of Article 15 of Title 30, and specifically, Part 4 of Article 15 of Title 30 at § 401(1)(n.5).

Section 5. Interpretation

This Ordinance shall be so interpreted and construed as to effectuate its general purpose to preserve and protect the public health, safety, and welfare of the citizens of Archuleta County, Colorado, by burning responsibly under appropriate parameters, and by documenting open fires and open burning in unincorporated Archuleta County and by establishing an open burn permit or contract system in coordination with the Sheriff's Office and special districts having fire jurisdiction to allow oversight of open burning in order to prevent wild fire in Archuleta County. Section headings and any cross references shall not be deemed to govern, limit, modify or affect in any manner the scope, meaning or extent of any provision of this Ordinance.

Section 6. Application

This Ordinance shall apply throughout unincorporated areas of Archuleta County, including public, private, and state lands.

Section 7. Definitions

For the purposes of this Ordinance, the following shall mean:

“Air Curtain Destructor (also known as Air Curtain Burners or Air Curtain Incinerators)”: An open burning device that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Devices of this type may be constructed above or below ground and with or without refractory walls and floor. (Air Curtain devices are not conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular and fluidized bed combustors.)

“Agricultural Burning”: Burning of cover vegetation for the purpose of preparing the soil for crop production, weed control, or maintenance of water conveyance structures related to agricultural operations and other agricultural cultivation purposes.

“Broadcast Burn”: The controlled application of fire to wildland fuels in their natural or modified state over a predetermined area. Broadcast Burns do not include the burning of wildland fuels that have been concentrated in piles by manual or mechanical methods.

“Extinguished”: No excessive heat or visible flame, smoke, or emissions exist.

“Fire Restriction Evaluation Guidelines”: That set of evaluation criteria currently in use by federal, state, and local fire suppression/management agencies for monitoring fuel moistures, fire danger class, current impacts on suppression resources, current fire cause types, fire weather forecasts, and other indicators of predicted fire danger.

“Fire Restriction and Stages”:

- **“Stage 1 Restrictions”:** Prohibits the following activities:
 1. Open fire and open burning, excepting fires and campfires within permanently constructed fire grates, charcoal grills and wood burning stoves in developed campgrounds and picnic grounds, or private residences in areas cleared of all flammable materials, other than those exceptions/exemptions as noted in Section 9 below.
 2. The sale or use of fireworks.
- **“Stage 2 Restrictions”:** Prohibits the following activities
 1. All open fire and open burning as defined other than those exceptions/exemptions as noted in Section 9 below.
 2. The sale or use of fireworks.
 3. Outdoor smoking except within an enclosed vehicle or building.

“Open Burning”: Vegetation management that involves the combustion of one or more piles of clean, dry natural vegetative material on an open premises, or on any public street, alley or other land adjacent to such premises.

“Open Fire”: For the purposes of this Ordinance, open fires shall be defined as outdoor fire, including, but not limited to, Vegetation Management Burning, campfires, warming fires, charcoal grill fires, fires in wood-burning stoves, the use of explosives, outdoor welding or operating an acetylene or other torch with open flame other than in an area cleared of all flammable materials, fireworks of all kinds or brands, and the prescribed burning of fence lines or rows, fields, farmlands, rangelands, wild lands, trash, and debris.

“Person”: Any individual, association, organization, partnership, firm, corporation, business or other entity recognized by law.

“Prescribed Burning”: The controlled application of fire in accordance with a written prescription for wildland fuels under specified environmental conditions while following appropriate precautionary measures that ensure that the fire is confined to a predetermined area to accomplish the planned fire or land-management objectives, in accordance with the Colorado Prescribed Fire Planning and Implementation Policy Guide, issued by the Colorado Division of Fire Prevention and Control.

“Red Flag Warning”: A forecast warning issued by the National Weather Service to inform area firefighting and land use management agencies that conditions are ideal for wildland fire ignition and propagation.

“Slash”: Woody material less than six inches in diameter consisting of limbs, branches, and stems that are free of dirt. “Slash” does not include tree stumps, roots, or any other material.

“Vegetation Management Burning”: Fire that a person starts and that is intentionally used for wildland or forest management, including vegetative, habitat, or fuel management, and yard waste burning consisting of clean dry vegetative material. Vegetation Management Burning includes air curtain destructor and slash pile burning. Vegetation Management Burning **does not include:**

1. Burning in the course of agricultural operations.
2. Burning for purpose of maintaining water conveyance structures.
3. Smokeless flares or safety flares for the combustion of waste gases.
4. Flares used to indicate danger.
5. Emissions from fireplaces, fire pits, chimineas or other wood burning containers that have been approved and used for non-commercial, recreational or aesthetic purposes using clean, dry, untreated wood or charcoal.
6. Cooking fires that are smaller than three feet in diameter and less than two feet high that are kindled for the purpose of cooking food using only clean, dry, untreated wood or charcoal, which are contained by fireplaces, fire pits (free standing and / or above ground), barbeques or other systems approved by the local special district having fire jurisdiction or the Archuleta County Sheriff’s Office.
7. Broadcast burns conducted within federal and state guidelines that have a written prescribed fire plan.
8. The use of explosives.
9. Outdoor welding or operating an acetylene torch with open flame.
10. The use of fireworks of all kinds or brands.

Section 8. Unlawful Acts

1. No person shall conduct Vegetation Management Burning within unincorporated areas of Archuleta County, including private and County property, without first having obtained an Open Burning Permit from the Archuleta County Sheriff's Office, and adhering to the terms of the permit and the requirements established in Section 12 or having entered into a written Memorandum of Understanding Covering Burns with Archuleta County. (hereinafter MOUCB)
2. No person shall conduct open burning of items that are prohibited in Vegetation Management Burning at any time in the unincorporated areas of Archuleta County including private County property.
3. Engaging in activity prohibited when Stage 1 or Stage 2 Restrictions are in effect, other than as excepted or exempted, in the unincorporated areas of Archuleta County including public, private, state, and applicable federal lands.

Section 9. Exceptions/Exemptions

The following shall not be in violation of Section 8:

1. Commercial or community fireworks displays properly maintained
2. Fires contained within liquid-fueled or gas-fueled stoves; indoor fireplaces and wood-burning stoves; and outdoor charcoal grills and wood-burning stoves during Stage 1 Restrictions, providing they are at private residences and in an area cleared of all flammable materials including dry vegetation.
3. The burning of irrigation ditches in the designated areas is prohibited by this Order EXCEPT for ditches located within, and completely surrounded by, irrigated farmlands where such burning is necessary for crop survival. Prior to such excepted ditch burning, permission must be obtained from the Sheriff by and through the Sheriff's designee.
4. Persons with a permit or written authorization from the Sheriff, by and through the Sheriff's designee, specifically authorizing the otherwise prohibited act or omission. Issuance of such permit or written authorization shall be contingent upon concurrence of any special district having fire jurisdiction.
5. Any federal, state, or local officer, or member of an organized rescue or firefighting force, in the performance on an official duty.
6. Any further exemptions to either the meaning of terms or the enforcement of this Ordinance shall be granted only by the Sheriff, by and through the Sheriff's designee, or for exemptions upon or within Archuleta County, by the administering agency, and only if the proposed action is deemed by the Archuleta County Sheriff, through the Sheriff's designee, to be safe and manageable with the concurrence of any special district having fire jurisdiction.

Section 10. Implementation of Fire Restriction Stages

The Archuleta County Sheriff or his designee shall monitor fire danger conditions and coordinate with Federal, State and local fire agencies to determine the appropriate stage of restrictions. When the Fire Restriction Evaluation Guidelines contained in the Archuleta County Wildland Fire Annual Operating Plan as established from time to time, indicate that enforcement of Section 8, Subsection 3, of this ordinance under Stage 1 Restrictions should be re-instated, or that restrictions should be upgraded to Stage 2 Restrictions, the Archuleta County Sheriff, or his designee shall coordinate notification to the public through a general press release to local radio and print media, as well as posting on the Archuleta County Internet Website and Archuleta County Sheriff's Office Facebook page. Likewise, when conditions indicate a reduction in restrictions from Stage 2 to Stage 1, or the suspension of enforcement of Section 8, Subsection 3, the same notification to the public shall occur.

Section 11. Permit Application Process and Burn Log Procedure

1. Open Burning Permits will only be issued for those fires defined as Vegetation Management Burning.
2. An Open Burning Permit may be revoked at any time if any permit requirements are not complied with. Open Burn Permits are invalid during Stage 1 or Stage 2 Fire Restrictions or during a Red Flag Warning and any fire already ignited under such permit must be extinguished.
3. Open Burning Permits may be purchased at the Pagosa Springs Fire Protection District office located at 191 N. Pagosa Blvd. in Pagosa Springs. Notwithstanding anything to the contrary, in the event either A) a person desires to burn in excess of the size limits specified in Section 12 Paragraph numbered 3 below, or otherwise vary from the specification set forth in this Ordinance; or B) The Sheriff or his designee determine it to be in the best interests of the County, then either no permit shall be issued by the Pagosa Springs Fire Protection District or, if one has been issued it shall be revoked and Such person shall enter into a written MOUCB governing their burn practices with Archuleta County.

Provided, however, nothing shall require the Pagosa Springs Fire Department or Archuleta County to enter into such MOUCB in which case the person shall be limited to obtaining a permit hereunder and complying with the specifications set forth herein.

4. The Archuleta County Combined Dispatch shall keep a log of each notification it receives regarding an intent to initiate such open burning of slash and verify that either a permit has been issued or an MOUCB executed authorizing the burn.

Section 12. Vegetation Management Burning Requirements

1. Persons with Open Burning Permit or MOUCB shall notify responsible fire agencies, including the Sheriff's Office and any special district having fire jurisdiction on the day of and within one hour before commencing burning. Persons shall notify responsible fire agencies upon completion of the Open Burn. Responsible fire agencies shall be notified via Pagosa Area Dispatch at 970-731-2160.
2. If an Open Burn is to be conducted by someone other than the legal owner of the property, written permission for the Open Burn shall be obtained from the legal owner or his/her agent and submitted as part of the permit application.
3. Piles may be up to eight feet wide and at least four feet tall, with material no greater than six inches in diameter, and shall be compliant with any criteria established by a special district having fire jurisdiction.
4. Open Burn Fires shall be constantly and directly attended and observed by a competent person. Appropriate extinguishing equipment shall be available and ready for immediate use. The Open Burn Permit or a true and correct copy of the fully executed MOUCB shall be in possession of the person attending and observing the Open Burn at all times during the Open Burn.
5. The Open Burn shall be conducted 50 feet or more from any structures or combustible fence.
6. All fires shall be conducted within the terms of the Open Burning Permit or the MOUCB. This does not apply to recreational fires, including bonfires, camp fires, and fires used for cooking.
7. Local special districts having fire jurisdiction may have codes, regulations, policies or standards that are more restrictive or prohibit certain activities. In this cases, the more restrictive or prohibitive provisions apply.
8. Open Burns of Slash piles are allowed only when there are predicted or actual winds of 10 mph or less. All Open Burns of Slash piles conducted above 7,000 feet elevation are required to have three or more inches of snow on the ground around the slash, unless an Air Curtain Destructor is used.
9. There shall be no Vegetation Management Burning while red flag warning is in effect in the fire weather zone of the designated burn or during Stage 1 or Stage 2 Restrictions.
10. Persons receiving Open Burn permits or entering into MOUCB shall make reasonable efforts to notify owners and occupants of neighboring properties prior to ignition. The County will maintain an online, publicly available list of addresses for active burn permits and MOUCBs.

Section 13. Enforcement Agencies/Prosecution

1. This Ordinance shall be enforced by the Sheriff, through his Deputies, including the Sheriff's designee, or by the special districts having fire jurisdiction or administering agencies of the state and federal lands located therein, and they shall have authority to order any person to immediately cease any violation of this ordinance. This authority shall include, but not limited to, the right to issue a penalty assessment notice and the right of a Post Certified Deputy to take such person or persons into temporary custody. Any further exception to the enforcement ability of this Ordinance by the administering agency shall be granted only by the administering agency, and only if the proposed action is deemed by the Sheriff of Archuleta County or the state or federal administering agency to be safe or manageable.
2. Criminal prosecution may be brought against a violator in accordance with C.R.S. §30-15-402(1) as amended by H.B. 96-1117, and 30-15-410, and under the penalty assessment procedure provided in C.R.S. §16-2-201. The Sheriff's Office is authorized to devise a ticketing system in conformance with C.R.S. §16-2-201.
3. Each violation of this Ordinance shall be deemed separate and distinct from any other violation of this Ordinance or of any other federal, state, or local law, order or regulation.
4. Any person who violates this Ordinance from the effective date commits a Class 2 Petty Offense under C.R.S. §30-15-402, and, upon conviction or confession of guilt thereof, shall be punished by a fine of not more than six hundred dollars (\$600.00), or by a fine of not more than one thousand dollars (\$1,000.00) during Stage 2 Open Burning Restrictions, for each separate violation, plus a surcharge of ten dollars (\$10.00). Fines are to be set by the County Court, unless the violator wishes to confess guilt and, pursuant to the penalty assessment procedure, pay the fine in the amount of one hundred dollars (\$100.00), or by fine of five hundred dollars (\$500.00) during Stage 2 Open Burning Restrictions, plus the ten dollar (\$10.00) surcharge. Agricultural burning is exempt from this requirement.
5. All fines paid for the violation of this Ordinance shall be in negotiable funds made payable to Archuleta County and submitted to the Archuleta County Treasurer's Office, P.O. Box 790, Pagosa Springs, CO, 81147 within twenty (20) days of a receipt of a notice of violation. All fines and surcharges for the violation of this Ordinance received by the County shall be remitted to the Archuleta County Treasurer and deposited into the general fund of Archuleta County.

Section 14. Additional Remedies

The remedies provided in the Ordinance shall be cumulative and in addition to any other federal, state or local remedies, criminal or civil, which may be available. Nothing contained herein shall be construed to preclude prosecution under any applicable statute, including, but not limited to, prosecution under C.R.S. §18-4-105, 18-13-109.5, or any applicable local, state or federal statute, ordinance, rule, order, or regulation.

Section 15. Safety Clause

The Board finds, determines, and declares that this ordinance is necessary for the immediate preservation and protection of the health, safety, and welfare of the citizens of Archuleta County, Colorado.

Section 16. Severability

Should any section, subsection, clause, sentence or phrase of this Ordinance be adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, impair or invalidate the other provisions of this Ordinance which can be given affect without such invalid provision.

Section 17. Repeal of Conflicting Provisions

All former County ordinances, resolutions, rules or regulations, or parts thereof, in conflict with this Ordinance are hereby repealed.

Section 18. Effective Date

In the interest of immediate preservation of public health, safety and welfare, this ordinance shall become effective upon its passage. This Ordinance placing a restriction on all open fires and open burning and establishing an open burning permit process for Vegetation Management Burning within the unincorporated areas of Archuleta County shall be effective immediately, and remain in effect until this Ordinance is amended or rescinded by the Board.

INTRODUCED AND READ ON FIRST READING ON this _____ day of April, 2018 and which was published on April 19, 2018 in full in the Pagosa Springs Sun in Pagosa Springs, Archuleta County, Colorado.

BOARD OF COUNTY COMMISSIONERS
ARCHULETA COUNTY, COLORADO

Steve Wadley, Chairman

ATTEST:

June Madrid, County Clerk & Recorder