

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE 02-356

**AN ORDINANCE OF THE INCORPORATED COUNTY OF LOS ALAMOS
AMENDING ARTICLE II, DIVISION 1, OF CHAPTER 22, SECTION 22-33 FIRE
RESTRICTIONS AND DUTIES AND POWERS OF THE FIRE CHIEF, SECTION
22-35 APPEALS, AND 22-36 VIOLATIONS; PENALTIES**

WHEREAS, the Incorporated County of Los Alamos, New Mexico (“County”) is a home rule county possessing the full power of local self-government pursuant to Article X, Sections 5 and 6 of the New Mexico Constitution, NMSA 1978, Chapters 3, 4 and 5, and County’s Home Rule Charter; and

WHEREAS, the State Legislature, in NMSA 1978, § 3-18-11, has granted certain fire protection powers to County, including the authorization to adopt, by ordinance, regulations for the prevention of fires; and

WHEREAS, on February 28, 2023, County Council adopted Code Ordinance No. 02-239 authorizing the Fire Chief, the Fire Marshal, or their designee, to issue orders to limit and restrict certain outdoor activities to limit and prevent the potential of wildfires during times of drought; and

WHEREAS, due to increasing drought conditions throughout the State of New Mexico, including the Incorporated County of Los Alamos, the County needs the ability to limit and/or restrict the use of fire and certain outdoor activities; and

WHEREAS, the County has continued to experience severe to extreme drought conditions leading to an earlier start of wildfire season; and

WHEREAS, the County Council of the Incorporated County of Los Alamos, New Mexico, deems it to be in the best interest of the County and its residents and visitors to amend the Fire Code to better define the three stages of fire restrictions to facilitate better understanding and compliance among County residents and stakeholders and to better align with the standards set forth by the United States Forest Service (USFS), Los Alamos National Laboratory (LANL), National Parks Service-Bandelier, Santa Clara and San Ildefonso Pueblo during peak wildland fire season promoting consistency and coordination in wildfire management efforts.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF THE COUNTY OF LOS ALAMOS, NEW MEXICO, THAT:

SECTION 1. Sections 22-33, 22-35, and 22-36 of Article II, Division 1, of Chapter 22 of the County Code of Ordinances are hereby amended as follows:

Sec. 22-33. - Duties and powers of Fire Chief.

- (a) The adopted codes including all inspections and permits authorized thereunder, and the provisions of this chapter of the county code shall be enforced by the fire chief, the fire marshal, or their designee.
- (b) *Authority to enter premises.* The fire chief, the fire marshal, or their designee shall have the power to enter all property within the county for purposes of enforcing this code and shall be for the purposes of fire and life safety. Entry into a building or structure shall be

at a reasonable time for inspections. The authority to enter shall not include inspection of interiors of private parties, dwellings or living quarters, or the portions of commercial premises used as dwellings, or the non-public portions of commercial premises, except upon obtaining a search warrant, or permission of the occupant thereof, or permission of the party responsible therefore in the event the premises are unoccupied. The provisions of this section do not apply in the event of explosion, fire or like emergency.

- (c) The fire chief, the fire marshal, or their designee shall have the authority to develop and implement a public fire safety education program as deemed necessary for the general welfare with respect to potential fire hazards within the county. The fire chief, the fire marshal, or their designee shall have the authority to ensure duly authorized public fire safety education programs or public fire safety messages are disseminated to the general public.
- (d) The fire chief, the fire marshal, or their designee may issue the permits provided for in the adopted codes but is granted discretion to determine the necessity of said permits. Nothing herein is intended to create a duty to issue permits or to require that the fire chief, the fire marshal, or their designee to exercise the authority conferred by the adopted codes.
- (e) ~~Based on the threat of a wildland fire event as warranted by the overall fire threat, which shall be determined by the fire chief using accepted standards, practices, and information in wildfire science, the fire chief, the fire marshal, or their designee may impose the following restrictions county-wide:~~

Definitions.

For the purpose of this section, the following definitions apply:

1. Free of nearby vegetation and combustible materials means an area of at least six (6)-feet in diameter from the fire source that does not contain vegetation, including grass, or combustible materials.
2. Spark arresting device means any device which prevents the emission of flammable debris from combustion sources, such as internal combustion engines, fireplaces, and wood-burning stoves.

- ~~(e)~~ (f) Based on the threat of a wildland fire event as warranted by the overall fire threat, as which shall be determined by the fire chief employing the accepted standards, practices, and information in wildfire science, the fire chief, the fire marshal, or their designee may impose the following restrictions county-wide: the following Stage I, Stage II, and/or Stage III fire restrictions, which shall take effect immediately upon the issuance of an order executed by the fire chief, the fire marshal, or their designee and shall remain in effect until rescinded by a subsequent order. The order may be amended as the conditions warrant. All orders issued pursuant to this ordinance shall be promptly filed by the fire chief, the fire marshal, or their designee, and recorded with the County Clerk.

- (g) Notice. Any order imposing, lifting, or modifying Stage I, Stage II, and/or Stage III fire restrictions shall be published immediately after its issuance through a County press release, and shall be promptly printed and posted in a conspicuous place in the vicinity of the front door of the Municipal Building at 1000 Central Avenue, Los Alamos, New Mexico

and visible from the exterior and posted on the County's website as soon as is practicable, provided the website is operational. Copies of the notice shall be provided to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation which have made a written request pursuant N.M. Stat. Ann. § 10-15-1(d) of the Open Meetings Act to receive notice of public meetings for the coming year.

1. Stage I

~~(a) — Violations of conditions and restrictions imposed by Article II (Fire Prevention Code) of Chapter 22 (Fire Prevention and Protection) of the County Code are unlawful.~~

(a) Building, maintaining and use of outdoor fires including campfires and recreational fires of any kind and outdoor cooking is prohibited unless:

- i. the fire is built on a developed campground or picnic area open to the public, and contained in a structure designed for the containment of fires, such as a metal ring or fire pit; or
- ii. the fire is built on a site free of nearby vegetation and combustible materials, with a spark arrestor screen in place.
- iii. the outdoor cooking is conducted on a device built for outdoor cooking and equipped with fire containment protections, such as a charcoal grill, pressurized gas or propane-fire grill with a lid that closes, or with pellet stove, or electric cooking device.

(b) Fires and outdoor cooking allowed under Stage I restrictions shall be subject to ongoing surveillance during and after use, and one of the following must be readily available during and after use:

- i. a portable fire extinguisher;
- ii. a hose with a water source; or
- iii. a shovel with sufficient dirt available to extinguish the fire.

2. Stage II

~~(a) The violation of Stage I fire restrictions is unlawful.~~

~~(b) Any fire permits for recreational fire devices issued prior to the imposition of Stage II fire restrictions are suspended.~~

~~(c) The use of outdoor cooking or recreational fire device that uses charcoal or wood is unlawful.~~

~~(d) The use of unattended outdoor gas and pellet cooking devices is unlawful.~~

~~(e) The use of campfires and any recreational fire is unlawful.~~

~~(f) Outdoor smoking is unlawful unless an area has been specifically permitted by the fire marshal or fire chief.~~

- ~~(g) The operation of small internal combustion engine equipment is unlawful unless the small internal combustion engine is equipped with a spark arresting device.~~
- ~~(h) Outdoor welding, metal grinding, hot tar roofing, driveway sealing, and oxy-acetylene metal cutting, and any other outdoor work which produces a hot ember or visible flame is unlawful unless a permit is obtained from the fire marshal.~~
- ~~(i) The use of fireworks is prohibited.~~
- (a) Building, maintaining and use of outdoor fires including campfires and recreational fires of any kind is prohibited except for outdoor cooking conducted under the following conditions:
 - i. cooking is performed on a pressurized gas or propane fire grill with a lid that closes, pellet stove, or electric cooking device; and
 - ii. the pressurized gas or propane fire grill with a lid that closes, pellet stove, or electric cooking device is placed on a developed non-combustible hard surface such as a concrete slab; and
 - iii. the outdoor cooking is subject to ongoing surveillance while cooking is occurring; and
 - iv. during and after the outdoor cooking a portable fire extinguisher, a hose with a water source, or a shovel with sufficient dirt available to extinguish a fire must be readily available.
- (b) Smoking is prohibited unless in an enclosed vehicle or building, or in an area free of nearby vegetation and combustible materials.
- (c) The ignition and use of fireworks and other pyrotechnic devices is prohibited.
- (d) Operating any small equipment or tools powered by an internal combustion engine, including chainsaws or lawnmowers, is prohibited, unless used by a property owner or the property owner's agent to maintain their residential or commercial property. Use of small equipment or tools permitted under this section shall be equipped with a spark arresting device.
- (e) Outdoor welding and/or operating any torch with an open flame or external features that produce sparks, such as an acetylene torch, is prohibited unless specifically granted written approval or permit by the fire chief, fire marshal, or their designee.
- (f) Any outdoor work which produces a hot ember or visible flame is prohibited, unless a permit is obtained from the fire chief, fire marshal, or their designee.

3. Stage III

- ~~(a) The violation of Stage II fire restrictions is unlawful.~~
- ~~(b) Outdoor smoking is unlawful and any permits issued by the fire marshal or fire chief during stage II fire restrictions allowing outdoor smoking in specific areas are revoked.~~

~~(c) — Outdoor welding, metal grinding, hot tar roofing, driveway sealing, and oxyacetylene metal cutting, and any other outdoor work which produces a hot ember or visible flame is unlawful.~~

~~(d) — Operating small internal combustion engine equipment is unlawful.~~

(a) Building, maintaining and/or use of open campfires, recreational fire, charcoal or wood fire, and outdoor cooking is prohibited.

(b) Smoking is prohibited unless in an enclosed vehicle or building, or an area free of nearby vegetation and combustible materials.

(c) The ignition and use of fireworks and other pyrotechnic devices is prohibited.

(d) Operating any small equipment or tools powered by an internal combustion engine, including chainsaws or lawnmowers, is prohibited.

(e) Outdoor welding and/or operating any torch with an open flame or external features that produce sparks, such as an acetylene torch, is prohibited.

(f) Any outdoor work which produces a hot ember or visible flame is prohibited.

~~4. Except for stage I restrictions which are always in effect by operation of law, stage II and stage III fire restrictions shall take effect immediately upon the issuance of an order executed by the fire chief and shall remain in effect until rescinded by a subsequent order. The order may be amended as conditions warrant.~~

~~4.~~ 5. The provisions of this section may be enforced by county police officers, the fire chief, the fire marshal, or the fire chief's or fire marshal's designee.

Sec. 22-34 – Conflicting provisions of adopted codes.

Generally, the provisions of the County Code, the adopted codes and the referenced documents shall be read together and interpreted as complimentary provisions to the maximum extent possible. However, where the provisions of this chapter, the adopted codes and the referenced document cannot be interpreted as compatible and are clearly in conflict, conflicts shall be resolved in favor of the express provisions of this chapter.

Sec. 22-35 – Criminal Prosecutions or Administrative Appeals.

(a) Criminal Prosecution: Alleged violation(s) of this chapter which result in the Los Alamos County Police Department or a prosecutor making a charging decision and filing a citation or criminal complaint in the Court of Los Alamos County (Municipal Court) shall be adjudicated pursuant to the Rules of Procedure for the Municipal Courts (8-101 NMRA through 8-802 NMRA).

(b) Administrative Appeals: Any person aggrieved of a decision the AHJ regarding the interpretation or application of this chapter of the county code, or aggrieved within the meaning of the adopted codes, may file an appeal pursuant to the provisions of the

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adopted codes. However, notwithstanding any provision of the adopted codes to the contrary, such appeals shall be made as follows: an appeal board shall be constituted consisting of the fire chief, or his designee, the community development director, or his designee, and the public works department director, or his designee. Appeals shall be decided by a vote of a simple majority. Appeals shall be administered in a manner which accords the due process required for quasi-judicial proceedings under New Mexico law including the right to reasonable notice, an evidentiary hearing, the right to call witnesses, the right to have witnesses sworn and the right to confront and cross-examine all witnesses giving testimony. Decisions of the appeal board may be appealed to the county council. Decisions of the council may be appealed to the state district court.

Sec. 22-36 – Violations; penalties.

For violation(s) of this chapter which results in the filing of a citation or criminal complaint in the Court of Los Alamos County (Municipal Court), ~~Whenever the Fire Code Official determines that there has been a violation of this chapter, or the adopted codes~~ a written notice shall be issued to the alleged violator. Any notice served shall comply with the requirements of the Rules of Procedure for the Municipal Courts. ~~Penalties for violations shall be as set forth in Section 1-8 of the County Code.~~ ~~adopted codes set forth the specific provision of law which has been violated. Enforcement shall be pursuant to the powers, authorities, penalties, and provisions prescribed in the general provisions of the County Code.~~

SECTION 2. Effective Date. This Ordinance shall become effective thirty (30) days after notice is published following its adoption.

SECTION 3. Severability. Should any section, paragraph, clause or provision of this ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

SECTION 4. Repealer. All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

ADOPTED this 5th day of March 2024.

**COUNCIL OF THE INCORPORATED
COUNTY OF LOS ALAMOS**

**Denise Derkacs,
Council Chair**

ATTEST: (SEAL)

**Naomi D. Maestas,
Los Alamos County Clerk**

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