

ORDINANCE #23-08-01

ORDINANCE AMENDING THE BUNCOMBE COUNTY
FIRE PREVENTION AND PROTECTION ORDINANCES

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-121, the County may prohibit acts which are detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county;

WHEREAS, pursuant to N.C. Gen. Stat. § 160D-1104, the County is responsible for enforcing the Fire Prevention Code;

WHEREAS, On August 9, 1994, the Buncombe County Board of Commissioners adopted the Fire Prevention and Protection Ordinance;

WHEREAS, based on changes to state law, the Fire Marshal is requesting certain amendments to the Buncombe County Fire Prevention and Protection Ordinance; and

WHEREAS, this Board is of the opinion that it is in the best interests of the citizens and residents of the County to amend the Fire Prevention and Protection Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS THAT:

Section 1. The Buncombe County Code of Ordinances Chapter 30 "Fire Prevention and Protection Code" shall be amended as follows:

a. By deleting § 30-36 in its entirety and replacing it with the following:

"§ 30-36. - Responsibilities.

The Fire Marshal, or designee, is the Fire Code Official charged with the administration and enforcement of the North Carolina Building Code: Fire Prevention Code and any future iterations thereof, and shall be responsible for the enforcement of this Chapter, the North Carolina Building Code: Fire Prevention Code, and all laws and ordinances covering the following:

- (1) The prevention of fires.
- (2) The storage, sale, and use of combustible, flammable or explosive materials.
- (3) The installation and maintenance of automatic and other fire alarm systems, and fire extinguishing equipment.
- (4) The maintenance and regulation of fire escapes.
- (5) The means and adequacy of exit in case of fire from factories, schools, hotels, lodging houses, asylums, hospitals, churches, halls, theaters, amphitheaters.
- (5.1) The adequacy of ingress, egress, and regress to and from the construction and/or development of a tract of land into individual residential dwelling units, including mobile homes, modular homes or manufactured homes designed for and occupied by one family only, and being completely detached from other dwellings, and one or more buildings thereon for multifamily

use, including but not limited to condominiums, townhouses, row houses, apartments and other forms of group housing.

- (6) The investigation of the cause, origin, and circumstances of fires.
- (7) The maintenance of fire cause and loss records.”

b. By deleting § 30-38 in its entirety and replacing it with the following:

“§ 30-38. Investigations.

- (1) The Fire Marshal, or designee will be notified by Public Safety Communications of every structure fire occurring in the County.
- (2) The Fire Marshal or designee shall be responsible for investigating the cause, origin, and circumstances of every structure fire occurring within the jurisdiction of this Chapter where property has been destroyed or damaged, and if possible, determine whether the fire is the result of carelessness or design.
 - a. Such investigations shall begin immediately upon the occurrence of such fire.
- (3) Any injury or fatality resulting from a fire, the Fire Marshal’s Office shall be notified and respond to the scene of the fire.
- (4) Every fire shall be reported in writing to the Fire Marshal's Office within forty-eight (48) hours of its occurrence by the fire department responsible for fire protection in the area where the fire occurred.
- (5) Such reports shall be in the form prescribed by the Fire Marshal and shall contain a statement of all facts relating to the cause, origin, and circumstances of such fire, the extent of the damage caused by the fire, the insurance upon such property, and such other information as may be required.
- (6) If no investigator was requested to the fire scene, the responding fire department must complete the investigation module of the report prior to submittal.
- (7) All reports of fire department activities shall be submitted to N.C. Office of the State Fire Marshal via the National Fire Incident Reporting System, no later than the tenth of the following month.
- (8) Brush/woods/wildfires shall be the responsibility of the N.C. Forest Service to be the lead investigative agency, assisted by the Buncombe County Fire Marshal or his designee.
- (9) Vehicle or machinery fire investigations shall be conducted at the request of the officer in charge of the responding agency.”

c. By deleting § 30-39 in its entirety and replacing it with the following:

“§ 30-39. Periodic inspections.

The Fire Marshal, or designee, shall inspect all premises on a periodic basis for compliance with this article and other fire prevention regulations as follows:

Semi-annual	Public schools
Annual	Assembly – Restaurants, clubs, gyms, and places of entertainment, etc. Hazardous – Hazardous materials, flammable liquids and explosives facilities, etc. Institutional – Hospital, nursing homes, licensed care facilities, jails, etc. Residential – Apartments, hotels, motels, dormitories, etc. High-Rise Buildings – all use types. Adult and Child Day Care operations. Assisted Family Living and 24-Hour Adult Care Facilities. Substance abuse recovery, violence recovery and protection centers, physical and mental recovery centers.
Every two years	Factory-Industrial Facilities – manufacturing and assembly plants, etc. Educational Facilities – Private schools, except public schools are inspected every six months.
Every three years	Assembly –with an occupant load less than 100. Businesses – Banks, barber and beauty shops, gas stations and self-service, educational occupancies above the 12th grade, print shops, professional service offices (architects, attorneys, dentists, physicians, engineers), etc. Mercantile- Department stores, drug stores, markets, retail or wholesale stores, etc. Storage Facilities – Warehouses, garages, hangers Churches and Synagogues Miscellaneous – Tanks, silos, greenhouses, etc.

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d. The second paragraph of § 30-40 shall be modified to read as follows:

Any owner or occupant failing to comply with such order within a reasonable period after service shall be subject to a penalty of \$500.00 for each violation deemed to be "Life Safety" and \$100.00 per violation for every other violation.

e. The fourth paragraph of § 30-40, second sentence, shall be modified to read as follows:

The service of any such order may be made upon the occupant of the premises to whom it is directed, either by delivering a copy to such occupant personally, electronic delivery (email), or by leaving it with any person in charge of the premises, or if no such person is found upon the premises, by affixing a copy thereof in a conspicuous place or on the door to the entrance of said premises.

f. The first paragraph of § 30-42, shall be modified to read as follows:

The county fire marshal shall submit an annual report of activities to the Emergency Services Director, which shall contain all proceedings under this ordinance and any recommendations for amendments which the fire marshal deems appropriate.

g. By deleting § 30-44 in its entirety and replacing it with the following:

“§ 30-44. - Violation; penalty.

- (1) A violation of this Chapter shall be a misdemeanor punishable by a fine of not more than \$50.00 or by imprisonment for not more than 30 days or by both such fines and imprisonment.
 - a. The imposition of a penalty for any violation shall not excuse the violation nor shall the violation be permitted to continue.
 - b. Such persons shall be required to correct or remedy such violations or defects within a reasonable time, and when not otherwise specified, the application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.
 - c. Proof of such unlawful act or failure shall be deemed prima facie evidence that such act is that of the owner or other person in control of the premises.
- (2) Violations of the North Carolina Building Code: Fire Prevention Code Sec. 107.6 concerning Overcrowding, as well as any future iterations thereof, may, in addition to the penalties set forth above and/or any other penalties and/or remedies available at law, be punished as a civil penalty as follows:
 - a. First Offense – Written Warning or \$50 Fine
 - b. Second Offense - \$100 Fine
 - c. Third Offense - \$500 Fine
- (3) Upon the discovery of any Violation of the North Carolina Building Code: Fire Prevention Code Sec. 107.6 concerning Overcrowding, the Fire Marshal, or designee, is authorized to order the evacuation of a building, premise, or portion thereof to abate the overcrowded condition.
- (4) The County may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure who is in violation of the State Fire Prevention Code or this Ordinance.”

h. The first paragraph of § 30-46, shall be modified to read as follows:

The fire marshal shall require warning signs wherever hazardous materials are stored, processed, or handled. Such warning signs shall be conspicuously lettered in accordance with NFPA 704, Identification of the Fire Hazards of Materials; however, nothing in this section shall be held in conflict with G.S. Chapter 95, Article 18.

- i. § 30-47 shall be deleted in its entirety and replaced with the following:

“§ 30-47. Appendix B, Fire-Flow Requirements for Buildings.

The terms and conditions of Appendix B, Fire-Flow Requirements for Buildings, as contained in The North Carolina Fire Code, as adopted and published by the North Carolina State Building Code Council, is hereby specifically adopted by reference into this Buncombe County Fire Prevention Ordinance. The Fire Marshal has the authority to approve alternative methods of compliance in accordance with the North Carolina Fire Code.”

- j. § 30-48 shall be deleted in its entirety and replaced with the following:

“§ 30-48. Appendix D, Fire Apparatus Access Roads.

The terms and conditions of Appendix D, Fire Apparatus Access Roads, as contained in The North Carolina Fire Code, as adopted and published by the North Carolina State Building Code Council, is hereby specifically adopted by reference into this Buncombe County Fire Prevention Ordinance. The Fire Marshal has the authority to approve alternative methods of compliance in accordance with the North Carolina Fire Code.”

- k. By adding § 30-49 in its entirety:

“§ 30-49. Control and Prohibition of Open Burning

- (1) General. A person shall not kindle or maintain or authorize to be kindled or maintained any open burning unless conducted and approved in accordance with this ordinance and Asheville-Buncombe Air Quality Agency Code, Chapter 4, Section 1900 or as amended. Any conflict between this Ordinance and any State Code or regulation, the State Code or regulation shall prevail.
- (2) Prohibited open burning. The Fire Marshal shall have the authority to issue a County Wide Open Burn Ban when atmospheric conditions or local circumstances make such fires hazardous. Exception: Prescribed burning for the purpose of reducing the impact of wildland fire when authorized by the fire code official or fire suppression and mitigation agency.
- (3) Permit required. A permit shall be obtained from the fire code official in accordance with Section 105.6 of the N.C. Fire Prevention Code prior to kindling a fire for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, or a bonfire. Application for such approval shall only be presented by and permits issued to the owner of the land upon which the fire is to be kindled.
- (4) Authorization. Where required by state or local law or regulations, open burning shall only be permitted with prior approval from the state or local air quality management authority, provided that all conditions specified in the authorization are followed.

- (5) Extinguishment authority. Where open burning creates or adds to a hazardous situation, the fire code official, a County Service District Fire Chief, or their designee is authorized to order the extinguishment of the open burning operation.
- (6) Location. The location for open burning shall be not less than 50 feet (15 240 mm) from any structure, and provisions shall be made to prevent the fire from spreading to within 50 feet (15 240 mm) of any structure.
- (7) Exceptions:
 - a. Fires in approved containers that are not less than 15 feet (4572 mm) from a structure.
 - b. The minimum required distance from a structure shall be 25 feet (7620 mm) where the pile size is 3 feet (914 mm) or less in diameter and 2 feet (610 mm) or less in height.
- (8) Bonfires. A bonfire shall not be conducted within 50 feet (15 240 mm) of a structure or combustible material unless the fire is contained in a barbecue pit. Conditions that could cause a fire to spread within 50 feet (15 240 mm) of a structure shall be eliminated prior to ignition. A bonfire shall require a permit and inspection prior to occurrence by the fire code official.
- (9) Recreational fires. Recreational fires shall not be conducted within 25 feet (7620 mm) of a structure or combustible material. Conditions that could cause a fire to spread within 25 feet (7620 mm) of a structure shall be eliminated prior to ignition.
- (10) Portable outdoor fireplaces. Portable outdoor fireplaces shall be used in accordance with the manufacturer's instructions and shall not be operated within 15 feet (3048 mm) of a structure or combustible material. Exception: Portable outdoor fireplaces used at one- and two-family dwellings.
- (11) Attendance. Open burning, bonfires, recreational fires, and use of portable outdoor fireplaces shall be constantly attended until the fire is extinguished. A minimum of one portable fire extinguisher with a minimum 4-A rating **or** other approved on-site fire-extinguishing equipment, such as dirt, sand, water barrel, garden hose or water container, shall be available for immediate utilization.
- (12) Violation. A violation of this ordinance may result in the assessment of a civil penalty up \$500.00 per violation. In addition, a violation of this Chapter shall constitute a Class 3 misdemeanor as set forth in N.C. Gen. Stat. §G.S. 14-4. The maximum fine for a violation under this Chapter is \$500.00 or a maximum thirty (30) days imprisonment. These penalties are SEPARATE AND APART FROM ADDITIONAL PENALTIES IMPOSED BY OTHER LOCAL, STATE, OR FEDERAL AGENCIES."

Section 2. The Buncombe County Code of Ordinances Chapter 26, Article II, Division 4 shall be amended as follows:

- a. By deleting § 26-72 in its entirety and replacing it with the following:

“§ 26-72 – Control and Prohibition of Open Burning.

The current and subsequent Chapter 4, Section .1900 et al of the Asheville-Buncombe Air Quality Agency Code is hereby adopted by reference as fully as though set forth in this section as the ordinance for the Control and Prohibition of Open Burning for Buncombe County. Any conflict between this Section and § 30-49 of the Fire Prevention and Protection Code, this Section shall prevail.”

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This ordinance is effective upon adoption.

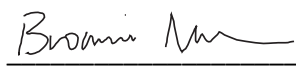
Read, approved, and adopted this 1st day of August, 2023.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE




Lamar Joyner, Clerk

BY: 

Brownie Newman, Chairperson

APPROVED AS TO FORM



County Attorney