



ORDINANCE No. _____

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

AN URGENCY ORDINANCE ADDING ARTICLE 6 OF CHAPTER XVI OF THE NEVADA COUNTY LAND USE AND DEVELOPMENT CODE TO PROHIBIT OUTDOOR BURNING DURING FIRE SEASON IN THE YUBA RIVER CORRIDOR AND REPEALING SECTION G-VII 1.23 FROM ARTICLE 1 OF CHAPTER VII OF THE NEVADA COUNTY GENERAL CODE (4/5ths AFFIRMATIVE VOTE REQUIRED)

THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION I:

Article 6 of Chapter XVI of the Nevada County Land Use and Development Code is hereby added to read as shown in Exhibit A, attached hereto and incorporated herein by this reference.

SECTION II:

Section G-VII 1.23 of Article 1 of Chapter VII of the Nevada County General Code is hereby repealed in its entirety.

SECTION III:

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of this Article, including the application of such part or provision to other circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one (1) or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

SECTION IV:

The Board of Supervisors hereby finds that this Ordinance is exempt from environmental review pursuant to Sections 15060(c)(2) and 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines (Title 14, Chapter 3 of the California Code of Regulations), as this action will not result in a direct or reasonably foreseeable indirect physical change in the environment and there is no possibility the activity in question may have a significant effect on the environment. In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15307 (actions taken as authorized by local ordinance to assure protection of natural resources), and 15308 (actions taken as authorized by local ordinance to assure protection of the environment).

SECTION V:

Pursuant to Government Code section 25123(d), this Ordinance shall take effect and be in force immediately upon the passage hereof, and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the Supervisors voting for and against same in The Union and Sierra Sun newspapers of general circulation printed and published in the County of Nevada.

PASSED AND ADOPTED by a four-fifths vote of the Board of Supervisors of the County of Nevada at a regular meeting of said Board held on the 11th day of September, 2018, by the following vote of said Board:

EXHIBIT A

“ARTICLE 6 SOUTH YUBA RIVER CORRIDOR BURN PROHIBITION

Sec. L-XVI 6.1 Findings and Purpose

- A. The State of California has designated the South Yuba River, from Lang Crossing to its confluence with Kentucky Creek below Bridgeport as a designated component of the California Wild and Scenic River System that contains extraordinary scenic, recreational, fishery, and wildlife values of statewide significance that deserve to be preserved in their free-flowing state for the benefit and enjoyment of the people of the state as provided in the California Wild and Scenic Rivers Act, pursuant to Public Resources Code section 5093.50 et seq.
- B. In 2001, the Nevada County Board of Supervisors adopted Resolution 01-355 to join the Memorandum of Understanding (MOU) between the United States Department of Agriculture (USDA) Forest Service, Bureau of Land Management and the California Department of Parks and Recreation on the management of the South Yuba River to develop a comprehensive, coordinated management plan called the South Yuba River Comprehensive Management Plan to coordinate a cohesive management strategy to manage public land resources and uses with the planning area of the South Yuba River Wild and Scenic System designation.
- C. The South Yuba River Wild and Scenic System designated corridor covers the lower 39-mile stretch of the South Yuba River from Lang Crossing to its confluence with Kentucky Creek below Bridgeport in Nevada County within a quarter mile from the ordinary high water mark on each side of the river (1,320 feet).
- D. As stated in the South Yuba River Comprehensive Management Plan, the “South Yuba River corridor, with its local weather and steep topography, can produce wildfires with the potential to quickly and intensely spread across ownership boundaries and human-caused fires are the primary concern both in the corridor and in the watershed. Human-caused fires have created the most damage, per event, of all wildfires within the watershed. Lighting fires are of secondary concern.” (p. 24)
- E. As further stated in the South Yuba River Comprehensive Management Plan, “Open campfires on public lands are not allowed anywhere within the corridor year round. Where camping is allowed, gas camp stoves are allowed unless fire restrictions are in effect. Fires are allowed only in agency-provided pedestal grills and fire rings in designated sites.” (p. 42)
- F. As further stated in the South Yuba River Comprehensive Management Plan, “Land ownership in the South Yuba River corridor is a patchwork of private and public lands. As a result, visitors have the potential to pass through private lands when accessing and recreating on public lands within the corridor. Some property owners welcome visitors to share their land. Others prohibit public access. There are conflicts at times between the visiting public and private property owners. Private property has been misused and occasionally damaged by thoughtless (and sometimes malicious) recreation visitors.” (p. 27)

- G. The Yuba River Public Safety Cohort, a multi-agency workgroup that includes federal, state and local public, fire and law enforcement agencies, as well as community private and nonprofit organizations and representatives, are in support of banning open fire on private property within the South Yuba River Wild and Scenic System designated corridor during fire season to mitigate severe high-fire risk from human-caused fires. The corridor contains thick dry brush and flammable vegetation along steep slopes as well as limited and/or restricted access of the topography and the potential for high wind, making it very difficult to fight fires in this area, due to the potential speed of a fire to spread.
- H. Per Board Resolution 18-062, a Nevada County 2018 Priority Objective is to “Prioritize the implementation of existing County policies and programs to reduce the risk of wildfire and the effects of wildfire on life, property and the environment. Pursue hazard vegetation mitigation funding sources and support related community partners with their efforts. Explore other ways to reduce the threat and damage from wildfires.”
- I. For purposes of consistency of public policy, should the County of Nevada consider implementing a ban on open fire on private property during fire season, the South Yuba River Public Safety Cohort recommends using the boundaries of the South Yuba River Wild and Scenic designated corridor that covers the lower 39-mile stretch of the South Yuba River from Lang Crossing to its confluence with Kentucky Creek below Bridgeport in Nevada County within a quarter mile from the ordinary high water mark on each side of the river (1,320 feet) as the boundaries for a ban on open fire given the increased risk of human caused fire from the restricted access of the topography and potential for high wind events and dangers thereof.
- J. Any ban on open fire on private property considered and/or implemented by the County of Nevada shall not be considered an action from the MOU Comprehensive Management Plan party between the County of Nevada, USDA Forest Service, Bureau of Land Management and the California Department of Parks and Recreation but rather shall be considered an action of the sole discretion of the County of Nevada with input and support from the South Yuba River Public Safety Cohort.
- K. Given the concerns regarding the restrictions on private property rights, it is recommended that any ban on open fire on private property considered and/or implemented by the County of Nevada be implemented as a pilot program in order to gain public input and feedback following the 2018-2019 fire seasons for future fire restrictions and/or consideration of a permanent ordinance.
- L. For purposes of consistency, upon the adoption of this ordinance, all outdoor burning regulations shall be located in the Land Use Development Code and any outdoor burning regulations shall be removed from the General Code.
- M. Northern California is experiencing a destructive fire season and catastrophic wildfires have already resulted in massive structural damage and deaths. It is necessary to take immediate action to mitigate the hazards of human caused wildfire that would have devastating impacts on the watershed, the surrounding community and the County as a whole.

- N. The proposed ordinance is an urgency measure, which if adopted by 4/5ths vote, will become effective immediately. Government Code section 25123(d) authorizes the Board to adopt an urgency ordinance “for the immediate preservation of the public peace, health, or safety.”

Sec. L-XVI 6.2 South Yuba River Corridor Burn Prohibitions

- A. This prohibition is effective from the Friday preceding Memorial Day Weekend at 8 a.m. to the end of fire season as declared by the California Department of Forestry and Fire Protection (CAL FIRE) as a pilot program from 2018 through 2019.
- B. Every firm, person or corporation is prohibited from conducting any and all outdoor burning on private property within the portion of the South Yuba River corridor that covers the lower 39-mile stretch of the South Yuba River from Lang Crossing to its confluence with Kentucky Creek below Bridgeport in Nevada County within a quarter mile from the ordinary high water mark on each side of the river (1,320 feet), as described and shown in Attachment A, attached hereto and incorporated herein by reference, with the following exceptions:
1. Wood and charcoal fires in permanent provided pedestal grills and fire rings in a designated developed recreation site (i.e. organized campground) in an area that is cleared of all non-structural flammable material in all directions at least ten (10) feet in diameter from the fire’s edge.
 2. Wood, charcoal, gas, jellied petroleum or pressurized liquid fuel fires inside:
 - a. Enclosed stove, grill, barbecue or portable brazier that is located in a designated developed recreation site (i.e. organized campground) or improved parcel located more than ten (10) feet away from a combustibile structure with readily available access to an emergency water supply system within 30 feet of the fire, that meets the general standards provided in Nevada County Title 3 Land Use and Development Code section L-XVI 4.3 and California Fire Code section 307-308, in an area that is cleared of all non-structural flammable material in all directions at least ten (10) feet in diameter from the fire’s edge with an occupying resident or owner present on the property.
 - b. A permanent fire ring or pit no larger than five (5) feet in diameter on an improved parcel that is located more than twenty-five (25) feet away from a combustibile structure with readily available access to an emergency water supply system within 30 feet of the fire, that meets the general standards provided in Nevada County Title 3 Land Use and Development Code section L-XVI 4.3 and California Fire Code section 307-308, in an area that is cleared of all non-structural flammable material in all directions at least ten (10) feet in diameter from the fire’s edge, with an occupying resident or owner present on the property.

3. Smoking within an enclosed vehicle or building, or while stopped in an area that is cleared of all non-structural flammable material in all directions at least (5) five feet in diameter.
- C. The foregoing shall not apply to any individual, firm or corporation who obtains a special permit from the U.S. Forest Service, Bureau of Land Management or California Department of Forestry which shall be necessary for the preservation of the public health, public safety or general welfare. This section shall apply to any and all outdoor burning of any kind, nature or description except campfires and cooking fires in designated allowable locations as outlined in Section II Subsection B above.
 - D. Persons who violate any provision of this Code or fail to comply with any of the requirements thereof shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1000.00) or imprisonment not exceeding 90 days in the County Jail, or both such fine and imprisonment.
 - E. This ordinance will sunset at the end of the 2019 fire season as declared by CAL FIRE and the United States Forest Service.”