

STATE OF COLORADO }
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COUNTY OF ELBERT }

At a regular meeting of the Board of County Commissioners for Elbert County, State of Colorado, held at the Courthouse in Kiowa on Wednesday, the 19th day of July A.D. 2006, there were present:

Suzie Graeff	Commissioner Chairman
Stephen Stutz	Commissioner - Absent
John Metli	Commissioner
Geri Scheidt	Deputy, Clerk to the Board

When the following proceedings, among other, were had and done, to wit:

ORDINANCE NO. 06-01

AN ORDINANCE RESTRICTING OPEN FIRES AND OPEN BURNING IN THE UNINCORPORATED AREAS OF ELBERT COUNTY

WHEREAS, the Elbert County Board of County Commissioners (hereinafter the "Board"), pursuant to section 30-11-107(1)(a) and section 30-15-401 et seq., C.R.S., 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, safety, and welfare of the citizens of Elbert County; and

WHEREAS, section 30-15-401(1)(n.5), C.R.S., authorizes the Elbert County Board of County Commissioners (hereinafter the "Board") to adopt an ordinance banning open fires to a degree an in a manner that the Board deems necessary to reduce the danger of wild fires within those portions of the unincorporated areas of the county where the danger of forest or grass fires is found to be high, and to ban the sale of fireworks in those unincorporated areas; and

WHEREAS, open fires and open burning can be a prime cause of forest and grass fires in Elbert County; and

WHEREAS, weather conditions, including the lack of precipitation, have created a threat of fire in the forests and prairies of Elbert County, and created a state of emergency with respect to fire danger; and

WHEREAS, the Board finds that competent evidence has been presented to the Board indicating that the danger of forest and grass fires in Elbert County is periodically high, and therefore, it becomes necessary from time to time, for the preservation of the public health, safety and welfare of the citizens of Elbert County, to impose a restriction on all open fires and open burning within the unincorporated areas of Elbert County.

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of the County of Elbert, as follows:

Section I. Title.

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

Section II. Purpose.

The purpose of this ordinance is to preserve and protect the public health, safety and welfare of the citizens of Elbert County, Colorado, by restricting open fires and open burning in the unincorporated areas of Elbert County in order to prevent forest and prairie fires given the high danger of such fires as a result of atmospheric conditions, including lack of moisture, and other local conditions in Elbert County.

Section III. Authority.

This ordinance is authorized by, *inter alia*, generally, 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 section 401(1)(n.5), C.R.S.

Section IV. Application.

This ordinance shall apply throughout the unincorporated areas of Elbert County, including public, private, state and applicable federal lands.

Section V. Definitions.

1. *Approved Portable Exterior Fireplace.* For purposes of this ordinance, an "approved portable exterior fireplace" shall mean any approved device used for outdoor recreational fires that completely prevents the omission of sparks and/or embers.
2. *Educational Rockets.* For purposes of this ordinance, "educational rockets" shall include rockets and toy propellant device type engines used in such rockets when such rockets are of nonmetallic construction and utilize replaceable engines or model cartridges containing less than two ounces of propellant and when such engines or model cartridges are designed to be ignited by electrical means.
3. *Fireworks.* For purposes of this ordinance, "fireworks" shall be defined as set forth in section 12-28-101(3), C.R.S., and specifically shall include "permissible fireworks" as defined in section 12-28-101(8), C.R.S. Fireworks shall not include:
 - a. Toy caps which do not contain more than twenty-five hundredths of a grain of explosive compound per cap;
 - b. Highway flares, railroad fuses, ship distress signals, smoke candles, and other emergency signal devices;
 - c. Educational rockets; or
 - d. Fireworks which are used in testing or research by a licensed explosives laboratory.

4. *Hot Work.* For purposes of this ordinance, "hot work" shall include cutting, welding, brazing, glass blowing, operating an acetylene or other torch with an open flame, or other similar type of operation.
5. *Open Fire or Open Burning.* For purposes of this ordinance, "open fire" or "open burning" shall be defined as any outdoor fire, including, but not limited to, campfires, warming fires, charcoal grill fires, fires in wood-burning stoves, the use of explosives, outdoor welding or hot work, fireworks of all kinds or brands, and the prescribed burning of fence lines or rows, fields, farmlands, rangelands, wildlands, trash, and debris. Open fires shall not include:
 - a. Fires in camp stoves or grills, fueled by bottled gas or pressurized liquid, and specifically designed for cooking or heating purposes;
 - b. Fires in permanently constructed stationary masonry or metal fireplaces specifically designed for the purpose of combustion;
 - c. Fires in commercially operated wood and/or charcoal fired grills designed for cooking.
6. *Smoking Within an Enclosed Vehicle.* For purposes of this ordinance, "smoking within an enclosed vehicle" shall mean that the cigarette, cigar or other smoking instrument is at all times contained within the vehicle and is not allowed to leave the vehicle or protrude or be held outside the vehicle, including the window of the vehicle. All butts and/or stubs must be disposed of within an appropriate receptacle or within the vehicle.
7. *Stage I Restrictions.* For purposes of this ordinance, "Stage I Restrictions" shall prohibit the following activities:
 - a. Open burning, excepting charcoal grill fires, fires in approved portable exterior fireplaces, outdoor welding or hot work, and the sale and use of fireworks in compliance with State and Local regulations.
 - b. Outdoor smoking, excepting smoking within an enclosed vehicle or building, a developed recreation site, or while stopped in an area at least three feet in diameter that is barren or cleared of all flammable materials.
8. *Stage II Restrictions.* For purposes of this ordinance, "Stage II Restrictions" shall prohibit the following activities:
 - a. Open burning, excepting charcoal grill fires, fires in approved portable exterior fireplaces, and outdoor welding or hot work.
 - b. Outdoor smoking, excepting smoking within an enclosed vehicle or building, a developed recreation site, or while stopped in an area at least three feet in diameter that is barren or cleared of all flammable materials.
 - c. The sale or use of fireworks.
 - d. Use of educational rockets.

9. **Stage III Restrictions.** For purposes of this ordinance, "Stage III Restrictions" shall prohibit the following activities:
- a. Open burning of any kind.
 - b. Outdoor smoking, excepting smoking within an enclosed vehicle or building, a developed recreation site, or while stopped in an area at least three feet in diameter that is barren or cleared of all flammable materials.
 - c. The sale or use of fireworks.
 - d. Use of educational rockets.
 - e. Use of indoor fireplaces and wood-burning stoves without an approved chimney spark arrestor.
 - f. Use of recreational motor vehicles without an approved forest service spark arrestor.

Section VI. Unlawful Acts.

During Stage I Restrictions, Stage II Restrictions, or Stage III Restrictions, it shall be unlawful for any person to build, maintain, attend or use an open fire, conduct an open burn, conduct sales of fireworks, or engage in outdoor smoking other than as excepted, in the unincorporated areas of Elbert County including public, private, state, and applicable federal lands.

Section VII. Exceptions.

The following are excepted from this ordinance:

1. Properly permitted commercial or community fireworks displays.
2. Fires contained within liquid-fueled or gas-fueled stoves.
3. The burning of irrigation ditches located within, and completely surrounded by, irrigated farmlands where such burning is necessary for crop survival. Prior to such excepted ditch burning, written permission must be obtained from the local fire authority.
4. Persons with a permit or written authorization from the local fire authority specifically authorizing in advance the otherwise prohibited act or omission, after inspection by the local fire authority of the containment structure, surrounding vegetation and potential fire fuel, and the immediate availability of fire suppression apparatus.
5. Any federal, state or local officer, or member of an organized rescue or firefighting force, in the performance of an official duty.

Section VIII. Ban On Open Fires and Open Burning.

1. At any regularly scheduled or special meeting of the Board of County Commissioners, the Board may, by resolution, impose a ban upon open fires and open burning in the unincorporated territory of Elbert County, or any defined portion thereof.
2. Such resolution shall be based upon a danger of wild fires within the areas where the danger of forest or grass fires is found to be high, by competent evidence which may include:

- a. The recommendation of the Elbert County Sheriff or any fire chief or other fire authority having jurisdiction within Elbert County;
 - b. Any similar ban imposed under the authority of the Governor of the State of Colorado;
 - c. Any recommendation, or similar ban, from the State Forest Service, National Park Service, United States Forest Service, or any other agency of the State or Federal Government;
 - d. The recommendation of the County Parks and Open Lands Department;
 - e. The recommendation of any municipality within Elbert County;
 - f. The recommendation, or similar ban, of any county adjacent to Elbert County;
 - g. Any testimony or exhibits establishing that, due to weather, weather forecasts, or condition of forest, grass or other vegetation, the likelihood of a wildfire is high.
3. Any such resolution shall specify whether Stage I Restrictions, Stage II Restrictions, or Stage III Restrictions are to be included in the ban.
 4. Any such resolution shall specify an expiration date of the ban. The ban may be extended in the same manner as its original imposition and upon competent evidence that the wildfire danger continues.
 5. Notice of such resolution may be given by best means available including, press release, individual notification to any agency requesting or advising in favor of the ban, individual notification to law enforcement agencies or such other means as in its discretion the Board deems is appropriate under the circumstances.

Section IX. Enforcement.

1. This ordinance shall be enforced by the Sheriff, through his deputies, or by the 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 be limited to, the right to issue a penalty assessment notice and the right to take such person or persons into temporary custody.
2. Criminal prosecution may be brought against a violator in accordance with section 30-15-402, section 30-15-402(1), and/or section 30-15-410, C.R.S., and under the penalty assessment procedure provided in section 16-2-201 C.R.S. The Sheriff's Office is hereby authorized to devise a ticketing system in conformance with section 16-2-201, C.R.S.
3. Any person who violates any open fire or open burning ban imposed under the authority of this ordinance commits a class 2 petty offense under section 30-15-402(1), C.R.S., and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00) during Stage I Restrictions, or seven hundred fifty dollars (\$750.00) during Stage II Restrictions, or one thousand dollars (\$1,000.00) during Stage III Restrictions, for each separate violation. In addition, persons convicted of a violation of this ordinance shall be subject to a surcharge of ten dollars (\$10.00) pursuant to section 30-15-402(1), C.R.S. If the alleged offender is found guilty, court costs may be assessed in addition to the fine and surcharge.

4. The penalty assessment procedure provided in section 16-2-201, C.R.S., may be followed by any arresting law enforcement officer for any violation of any open fire or open burning ban imposed under the authority of this ordinance. Pursuant to such penalty assessment procedure, the violator may pay a graduated fine, as follows:
 - a. For all Stage I Restrictions:
 - (1) Fifty Dollars (\$50.00) for the first offense, plus a surcharge of ten dollars (\$10.00) pursuant to section 30-15-402(1);
 - (2) Two Hundred Fifty Dollars (\$250.00) for the second offense within sixty days of the first offense, plus a surcharge of ten dollars (\$10.00) pursuant to section 30-15-402(1);
 - (3) Five Hundred Dollars (\$500.00) for each additional offense within sixty days of the first offense, plus a surcharge of ten dollars (\$10.00) pursuant to section 30-15-402(1).
 - b. For all Stage II Restrictions:
 - (4) One Hundred Dollars (\$100.00) for the first offense, plus a surcharge of ten dollars (\$10.00) pursuant to section 30-15-402(1);
 - (5) Three Hundred Fifty Dollars (\$350.00) for the second offense within sixty days of the first offense, plus a surcharge of ten dollars (\$10.00) pursuant to section 30-15-402(1);
 - (6) Five Hundred Dollars (\$500.00) for each additional offense within sixty days of the first offense, plus a surcharge of ten dollars (\$10.00) pursuant to section 30-15-402(1).
 - c. For all Stage III Restrictions:
 - (1) Two Hundred Fifty Dollars (\$250.00) for the first offense, plus a surcharge of ten dollars (\$10.00) pursuant to section 30-15-402(1);
 - (2) Five Hundred Dollars (\$500.00) for the second offense within sixty days of the first offense, plus a surcharge of ten dollars (\$10.00) pursuant to section 30-15-402(1);
 - (3) One Thousand Dollars (\$1,000.00) for each additional offense within sixty days of the first offense, plus a surcharge of ten dollars (\$10.00) pursuant to section 30-15-402(1).
5. All fines paid for the violation of this ordinance shall be in negotiable funds made payable to Elbert County and submitted to the Elbert County Treasurer's Office. All fines for the violation of this ordinance received by the County shall be remitted to the Elbert County Treasurer and deposited into the general fund of Elbert County. All surcharges collected shall be paid to the Clerk of the Court and subsequently credited to the Victims and Witnesses Assistance and Law Enforcement Fund of the Eighteenth Judicial District of the State of Colorado pursuant to section 30-15-402(2), C.R.S.
6. The remedies provided in this ordinance shall be cumulative and in addition to any other federal, state or local remedy, criminal or civil, which may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable statute, including, but not limited to, prosecution under section 18-13-109, C.R.S., or any other applicable statute, ordinance, rule, order or regulation.

Section X. Procedure.

All prosecutions for all offenses under this ordinance shall be by the District Attorney according to the Colorado County Court Rules of Criminal Procedure.

Section XI. Severability.

If any section, subsection, clause, sentence or phrase of this ordinance are for any reason adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, impair or invalidate any other provisions of this ordinance which can be given effect without such invalid provision. The Board hereby declares that it would have passed this ordinance and each part or parts thereof, irrespective of the fact that anyone part or parts be declared invalid.

Section XII. Interpretation.

This ordinance shall be so interpreted and construed as to effectuate its general purpose to reduce the danger of wild fires.

Section XIII. Effective date.

This ordinance shall be effective immediately and shall remain in effect until such time as this ordinance is amended, temporarily suspended or repealed.

Section XIV. Emergency.

The Board hereby 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 Elbert County, Colorado. This ordinance shall take effect immediately upon adoption on second and final reading.

Section XV. Certification:

The Elbert County Clerk and Recorder shall certify to the passage of this ordinance and make not less than three copies of the adopted ordinance available for inspection by the public during regular business hours.

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INTRODUCED, READ AND ADOPTED ON FIRST READING, on the 28th day of June, 2006, and ordered published in full in the Ranchland News and the Elbert County News.

THE BOARD OF COMMISSIONERS
OF THE COUNTY OF ELBERT, COLORADO

BY: Suzie Graeff
SUZIE GRAEFF, CHAIR

ATTEST:

BY: Amy L. Fordyce
AMY L. FORDYCE
ELBERT COUNTY CLERK AND RECORDER

ADOPTED ON SECOND AND FINAL READING, AS AMENDED, on the 19th day of July, 2006, and ordered published in its entirety in the Ranchland News & Elbert County News.

THE BOARD OF COMMISSIONERS
OF THE COUNTY OF ELBERT, COLORADO

BY: Suzie Graeff
SUZIE GRAEFF, CHAIR

ATTEST:

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