

ORDINANCE NO. 2012- 1

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

**ESTABLISHING A PERMITTING REQUIREMENT
FOR SLASH PILE BURNING**

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF FREMONT, COLORADO**

WHEREAS, §30-15-401(1)(n.5), C.R.S., authorizes the Board of County Commissioners ("Board") to adopt an ordinance banning open fires to a degree and 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

WHEREAS, the Fremont County Sheriff ("Sheriff") is authorized under the provisions of §§30-10-512 and 30-10-513, C.R.S., to act as fire warden of the county in case of prairie or forest fires, and to assume charge or assist other governmental entities in controlling or extinguishing forest or prairies fires; and

WHEREAS, the Sheriff has requested in the past and periodically will continue to request that the Board adopt restrictions on open fires and open burning in the unincorporated areas of Fremont County, and

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

WHEREAS, when prevailing dry weather and fuel conditions periodically create a threat of fire in the forests and prairies of Fremont County, and the Board of Commissioners needs the ability to declare and lift fire restrictions within the unincorporated areas of the county based on existent circumstances at the time; and

WHEREAS, fire hazard conditions may be significantly different in various areas of the County and imposition of a fire restrictions on a county-wide basis may not always be appropriate; and

WHEREAS, the Board finds that competent evidence has been presented to the Board indicating the danger of forest and prairie fires in Fremont County can become high without anticipated relief in sight, and therefore, it is necessary for the immediate preservation of the public health, safety and welfare of the citizens of Fremont County to provide the Board of Commissioners with authority to impose a restriction on all open fires and open burning within the unincorporated areas of Fremont County.

BE IT ORDAINED, BY THE BOARD OF COUNTY COMMISSIONERS OF FREMONT COUNTY, as follows:

Section 1. Title. This Ordinance shall be known and referred to as the "Fremont County Open Fire and Open Burning Restriction Ordinance" and may be cited as the Fremont County "Fire Restrictions Ordinance" and referenced as such.

Section 2. Purpose. The purpose of this Ordinance is to preserve and protect the public health, safety and welfare of the citizens of Fremont County, Colorado, by restricting open fires and open burning in the unincorporated areas of Fremont County in order to prevent forest and prairie fires when a high danger of such fires exists as a result of atmospheric and other conditions, including lack of moisture and other local conditions in Fremont county.

Section 3. Application.

a. This Ordinance shall apply throughout the unincorporated areas of Fremont County including public, private and state lands and to any incorporated town or city that elects by ordinance or resolution, or otherwise consents in writing, to have the provisions herein apply. This Ordinance shall not apply to federal public lands or lands within the jurisdictional boundaries of a fire special district, unless the county is specifically empowered by law to exercise such authority or unless the county and the fire district in question agree through an intergovernmental agreement to allow this Ordinance to apply.

b. The Board of County Commissioners may designate, by resolution, areas in the unincorporated territory of the county within which this Ordinance shall apply, and exclude other portions of the county from compliance with this Ordinance. Before such Resolution may be approved, the Board shall set forth a rational basis for the limited applicability and shall hold a public hearing prior to approval of such resolution. Any interested person may appear at the public hearing and shall have the opportunity to be heard.

Section 4. Definitions.

a. "Open Fire" shall be defined by Stage I, Stage II, and Stage III restrictions as set forth in this Ordinance and shall also include outdoor burning conducted without a burning permit (if required), or in violation of a burning permit.

b. "Agriculture" means the science and art of production of plants and animals useful to man, including, to a variable extent, the preparation of these products for man's use and their disposal by marketing or otherwise, and includes horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products and farm production.

c. "Undeveloped area" means an outdoor area that is not hard-surfaced, barren, or otherwise cleared of all flammable or ignitable vegetation and material.

Section 5. Fire Restrictions. Restrictions imposed on open burning or open fires are as follows:

A. STAGE ONE PROHIBITED ACTIVITIES

1. All agricultural burning including but not limited to weeds, brush, or grass;
2. Building, maintaining, attending or using a fire, campfire, coal or wood burning stove, fireplace, any type of charcoal or wood fueled cooking, or open fire of any type in an undeveloped area. Use of a coal or wood-burning stove or fireplace in a private residence in an undeveloped area is allowed only if the flue pipe, chimney, or other exhaust structure is equipped with a properly installed NFPA-approved spark arrestor such as a chimney cap.
Notes:
 - a. Campfires contained in constructed, permanent fire pits or fire grates within a **developed** recreation area are allowed;
 - b. Grills using propane and other bottled fuels are allowed only in areas free of flammable vegetation and other flammable materials, and must be used in a manner which present no fire danger to the surrounding area;
 - c. No fire or grill shall be left unattended, and shall have an adequate water supply and/or fire extinguisher on site.
3. All burning of trash, refuse or other debris.
4. Smoking; except within an enclosed vehicle, building, or outdoor smoking area that is hard-surfaced, barren, or otherwise cleared of all flammable vegetation and material. Discarding of cigarette butts in a receptacle not designed for disposal of cigarette butts, or at any location, or from any vehicle is expressly prohibited.
5. Using any explosives materials, to include: fireworks, solid fuel rockets, blasting caps or any incendiary device which may result in the ignition of flammable material;
6. Outdoor welding, grinding or use of any type of torch in any area which presents the possibility of igniting vegetation or other combustible material, and there must be an adequate water supply and/or fire extinguisher on site;
7. Operating any outdoor equipment or machinery in an undeveloped area with an internal combustion engine without a spark arresting device properly installed, maintained and in effective working order meeting either:
 - a. U.S. Dept. of Agriculture, Forest Service Standard 5100-1a; or
 - b. Appropriate Society of Automotive Engineers (SAE) recommended practice J335(b) and J350(a);

8. Sale, use and possession of fireworks, including permissible fireworks as defined in §12-28-101, C.R.S., however in no instance shall the sale, use and possession be prohibited for more than one year from the date of imposition of the fire restrictions until the suspension of the same.

B. STAGE TWO PROHIBITED ACTIVITIES

1. All Restrictions contained in Stage One, listed herein, and including the following additional restrictions:

- a. Building, maintaining, attending or using a fire, campfire, coal or wood burning stove, any type of charcoal or wood fueled cooking, or open fire of any type at any location.

Notes:

1. Grills using propane and other bottled fuels are allowed only in areas free of flammable vegetation and other flammable materials, and must be used in a manner which present no fire danger to the surrounding area;
 2. No grill shall be left unattended, and shall have an adequate water supply and/or fire extinguisher on site.
 3. Use of a coal or wood-burning stove or fireplace in a private residence is allowed only if the flue pipe, chimney, or other exhaust structure is equipped with a properly installed NFPA-approved spark arrestor such as a chimney cap.
- b. Off road use or parking of a motorized vehicle in an area which presents the possibility of sparks or exhaust heat igniting surrounding flammable vegetation.

C. STAGE THREE AREA CLOSURE

Emergency fire closures (closing an area to entry or use) have an extreme impact on the public and fire agencies, and are discouraged except under the most severe conditions. Closures are not justified by fire danger alone, but should be driven by the potential for risk to life and safety due to extreme fire behavior, high potential for human-caused fires, severe shortages of resources, and numerous large fires within the state.

Examples include:

1. Potential loss of life due to explosive fire conditions;
2. Potential for extreme or blowup fire behavior;
3. Stage I or Stage II restrictions are ineffective in reducing the number of human-caused fires;
4. Resources across the geographic area are at a critical shortage level;
5. Proximity to substantial population centers;

6. The extent of wildland urban interface.

An area of public lands under Stage Three open fire/burning restriction shall be closed to all entry except for individuals carrying a written permit, Federal, State and Local officers or members of organized search and rescue or firefighting forces performing official duties and resident landowners and lessees.

D. EXCEPTIONS TO STAGE ONE, TWO AND THREE RESTRICTIONS:

Section 6. Exceptions. The following shall be excepted from the provisions of Section 5 of this Ordinance:

- a. Agricultural burning by an agricultural producer on property owned by the agricultural producer;
- b. Sale, use and possession of permissible fireworks as defined in §12-28-101(3) and (8), C.R.S. between May 31 and July 5 of any year, unless the Board of County Commissioners makes a written express finding that all, or a portion, of Fremont County is in a state of high fire danger, based on competent evidence, which includes the use of the national fire danger rating system and any other similar indices or information;
- c. Fireworks displays properly permitted pursuant to §12-28-103, C.R.S.;
- d. Burning of explosive wastes by the manufacturer of explosives in areas zoned for industrial use, when the burning is supervised by a fire department or fire protection district.
- e. Open fires or open burning by any federal, state or local officer, or member of an organized fire protection district or department in the performance of official fire suppression, prevention, training function or other duties.

Section 7. Permit Required for Burning of Slash Piles.

- a. For purposes of this Section 7 of this Ordinance:
 - (1) "Open burning" means fire that a person starts and that is intentionally used for forest management.
 - (2) "Slash" means 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.
- b. Any person who desires to use an open burning method to dispose of slash piles shall be required to obtain a permit from the Fremont County Sheriff prior to use of any open burning method for such disposal. Any open burning of slash piles shall strictly comply with all conditions of the Sheriff as indicated in the permit.

- c. The Sheriff shall be authorized to charge a fee for issuance of a slash pile open burning permit in an amount reasonably calculated to offset actual costs of the permitting and monitoring process, not to exceed \$125.00.
- d. No permit shall be required for broadcast and pile burns conducted within federal and state guidelines that have a written and approved prescribed fire plan;
- e. No permit shall be required for agricultural burns that do not meet the combined definition of “open burning” of “slash.”
- f. Any person who obtains a permit for open burning of slash piles shall be required to notify any individual with respiratory conditions who has requested such notification, as well as all contiguous landowners of the date, time, and location of slash pile burns. The Sheriff shall adopt and maintain a policy to advise permit applicants regarding the method for notification, type of notice and timing of providing notice. The Sheriff shall maintain a registry of names, addresses and contact information of all individuals with respiratory conditions who have requested advance notification of slash pile burns. Notification shall be made as far in advance of the burn date as possible.
- g. The Sheriff, in issuance of permits, shall give due consideration to safe burning conditions at the burn location, and shall impose appropriate permit limitations concerning the number of slash piles that may be burned at one time per person who is monitoring the burn, the size of slash piles, temperature, humidity, snow cover, wind conditions, overhead and other types of electric and other utility facilities, including distances from such facilities, fuel type and moisture content, slope, and setbacks from real estate improvements.

Section 8. Unlawful Acts. It shall be unlawful for any person to build, maintain, attend or use an open fire or conduct an open burning activity in the unincorporated areas of Fremont County including public, private, state and federal lands, when the same is prohibited by Ordinance and/or Resolution of the Board of Commissioners for Fremont County

Section 9. Enforcement. This Ordinance shall be enforced by the Fremont County Sheriff, Undersheriff, and deputies.

Section 10. Suspension and Imposition of Ordinance.

a. The Board, by resolution, may temporarily suspend, in whole or in part, reinstate, and impose fire restrictions pursuant to this Ordinance from time to time depending on the severity of the fire danger in Fremont County. Any declaration of restrictions on open burning made pursuant to this Ordinance shall specify the Stage level restriction, the parameters and duration of the restrictions as deemed necessary and appropriate, and shall be promptly published through a general press release to local television, radios and print media, as well as posting on the Fremont County internet website. Likewise, when conditions indicate a reduction or increase

in restrictions, or the suspension or release of restrictions, the same notification to the public shall occur.

b. The authority for determining the effective Stage of the Fire Restrictions Ordinance, shall be and hereby is delegated to the Fremont County Sheriff who shall determine the appropriate Stage to apply during any and all times in which the fire restrictions are in effect

Section 11. Penalty for Violations.

A. Any person who violates this Ordinance from the effective date to and including the day prior to suspension or rescission of this Ordinance, commits a Class 2 Petty Offense under C.R.S. §30-15-402(1) and, upon conviction or confession of guilt thereof, shall be punished by a fine of not more than one-thousand dollars (\$1,000.00) for each separate offense plus a surcharge of ten dollars (\$10.00), under C.R.S. §30-15-402(2). Fines are to be set by the County Court, unless the violator wished to confess guilt and pursuant to the penalty assessment procedure within twenty (20) days of issuance of the ticket, pay the fine indicated plus the ten dollar (\$10.00) surcharge.

B. 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 rule, order or regulation.

C. Criminal prosecution may be brought against a violator in accordance with C.R.S. §§30-15-402 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.

D. The penalty assessment procedure provided in C.R.S. §16-2-201 may be followed by any arresting law enforcement officer for any such violation. The graduated fine schedule for such penalty assessment procedure shall be:

1. Two Hundred and Fifty Dollars (\$250.00) for the first offense;
2. Five Hundred Dollars (\$500.00) for the second offense within sixty (60) days of the first offense;
3. Seven Hundred and Fifty Dollars (\$750.00) for the third offense within sixty (60) days of the first offense;
4. One Thousand Dollars (\$1,000.00) for each additional offense within sixty (60) days of the first offense.
5. In addition to the penalty prescribed in this Ordinance, persons convicted of a violation of this Ordinance are subject to a surcharge of ten dollars (\$10.00).

Section 12. Disposition of Fines and Forfeitures. All fines and forfeitures for the violation of this Ordinance shall be paid to the Treasurer of Fremont County.

Section 13. Additional Remedies. 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 §18-13-109, C.R.S., or any other applicable statute, ordinance, rule, order or regulation.

Section 14. Severability. If any section, subsection, clause, sentence or phrase of this Ordinance is 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.

Section 15. 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 citizens of Fremont County, Colorado, in that a state-wide open burning ban was declared by the Governor by Executive Order dated June 14, 2012, which sets forth the severity of fire danger in Colorado. The Board finds that the weather conditions have created a high fire danger in Fremont County, which creates a threat to life, health and property.

Section 16. Repealer. Upon the effective date of this Ordinance, all prior Fire Ban or Fire Restrictions Ordinances, including but not limited to Ordinance Number 1, Series of 2006, and Ordinance Number 1, Series of 2007, adopted by the Fremont County Board of Commissioners shall be deemed repealed and shall be of no further validity or effect.

Section 17. Effective Date. The Board of County Commissioners hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety. This Ordinance shall be effective immediately and shall remain in effect until such time as this Ordinance is amended, temporarily suspended or repealed. The Board, by resolution, may reinstate, impose and temporarily suspend, in whole or in part, this Ordinance from time to time depending on the severity of the fire danger in Fremont County.

INTRODUCED AT FIRST READING ON THE 12th DAY OF JUNE, 2012

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THE BOARD OF COMMISSIONERS OF THE COUNTY OF FREMONT, COLORADO

Debbie Bell, Chairman

Edward H. Norden

Michael J. Stiehl

ATTEST:

Clerk of the Board