

Ordinance No. 19-02

**THE BOARD OF COUNTY COMMISSIONERS
OF CUSTER COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF
COLORADO**

**AN ORDINANCE RESTRICTING OPEN FIRES AND OPEN BURNING IN
THE UNINCORPORATED AREAS OF CUSTER COUNTY AND ALSO
INCLUDING THE INCORPORATED TOWNS OF SILVER CLIFF AND
WESTCLIFFE**

WHEREAS, C.R.S. §30-11-107 et seq. and §30-15-401(1)(n.5) et seq., authorizes the Board of County Commissioners to adopt ordinances, resolutions, rules and other regulations as may be necessary for the control or licensing of those matters or purely local concern, and to do all acts which may be necessary or expedient to promote health, safety, and welfare of the citizens of Custer County; and

WHEREAS, pursuant to C.R.S. §30-15-401(1)(n.5), the Board has specific authority to adopt an ordinance banning open fires to a degree and in a manner that the board deems necessary to reduce the dangers of wildfires within those portions of the unincorporated areas of the County where danger of forest or grass fires is found to be high; and

WHEREAS, the Board of County Commissioners and the Wet Mountain Fire Protection District have entered into an Intergovernmental Agreement pursuant to §29-20-105.5, C.R.S., with respect to this Ordinance in recognition of the fact that wildfires are impervious to the territorial boundaries of political subdivisions and that the full cooperation of both political entities is necessary to protect the public from the dangers of forest fires and prairie fires; and

WHEREAS, the incorporated Towns of Silver Cliff and Westcliffe are included within the boundaries of the Wet Mountain Fire Protection District and are therefore subject to the restrictions and permit requirements imposed by this Ordinance, and any violations of said restrictions or permit requirements occurring in either town are punishable as set forth herein; and

WHEREAS, a Reciprocal Fire Protection Assistance Agreement exists between the Wet Mountain Fire Protection District and the Rye Fire Protection District wherein the Rye Fire Protection District has agreed to provide equipment and personnel to assist the Wet Mountain Fire Protection District in fighting wildfires in a remote portion of Custer County which is within the boundaries of the Wet Mountain Fire Protection District, and agreements also exist with the Deer Mountain Fire Protection District, the Wetmore Volunteer Fire Department, the Beulah Fire Department and the Florence Fire Department for said agencies to assist the Custer County Sheriff in wildfire suppression efforts in unincorporated areas of Custer County that do not lie within the boundaries of the Wet Mountain Fire Protection District; and

WHEREAS, the Board of County Commissioners finds that Custer County has a substantial forested area, and that an open burning permit system is needed; and

WHEREAS, consideration has been given to existing laws and processes regulating open burning in the State of Colorado, and the Board of County Commissioners finds this Ordinance is

consistent with all such laws and processes; and

WHEREAS, the Sheriff of Custer County (“Sheriff”) is authorized under provisions of C.R.S. §§ 30-10-512 and 30-10-513, to act as Fire Warden of the County in case of prairie or forest fires, and to assume charge thereof or to assist other governmental authorities in controlling or extinguishing forest or prairie fires; and

WHEREAS, the Board of County Commissioners finds this Ordinance is both desirable and necessary for the purpose of providing the Custer County Sheriff with a law enforcement protocol to prevent such fires from occurring and by providing appropriate punitive measures for those who fail to comply with the open fire and open burning restrictions set forth herein and also for those who engage in open burning without the required permit or in violation of the terms and conditions of a permit; and

WHEREAS, there has been full compliance with all statutory requirements concerning notice to the public of this proposed Ordinance and publication of said Ordinance, and the public has now been afforded full opportunity to be heard on this proposed Ordinance at a first reading and a second reading as required by §30-15-404 through §30-15-407, C.R.S.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CUSTER AS FOLLOWS:

Section 1: Title

1.1 This Ordinance shall be known as the “Custer County Open Fire and Open Burning Restriction Ordinance” and may be cited and referenced as such.

Section 2: Purpose

2.1 The purpose of this Ordinance is to preserve and protect the public health, safety, and welfare of the citizens of Custer County, Colorado, by restricting open fires and open burning in Custer County at certain times 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 as they exist in Custer County.

Section 3: Authority

3.1 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 C.R.S. §401(1)(n.5).

Section 4: Restriction Stages

4.1 The Board of County Commissioners hereby declares there shall be three stages of fire restrictions which may be imposed for Custer County or portions thereof, and that each of these three stages creates restrictions on open fires and open burning during those periods of time when restrictions may be in effect.

Section 5: Application

5.1 This Ordinance shall apply throughout the unincorporated areas of Custer County,

including public, private, and State lands, and shall also apply to the incorporated Towns of Silver Cliff and Westcliffe by virtue of their inclusion within the boundaries of the Wet Mountain Fire Protection District.

Section 6. Definitions

6.1 **Open fire:** For purposes of this Ordinance, open fires shall be defined as any outdoor fire, including, but not limited to, bonfires, campfires, warming fires, charcoal grill fires, fires in wood-burning stoves, the use of explosives, outdoor welding, or operating acetylene or other torch with open flame other than in an area cleared of all flammable materials, fireworks of all kinds or brands, burn barrels, the outdoor burning of trash and debris. No permit is required for open fires of these types.

6.2 **Open Burning:** The intentional ignition of unwanted fuels, in place or collected, for the purpose of eliminating those fuels. Open burning is further defined by Stage I, Stage II and Stage III restrictions as set forth in this Ordinance. An open burn permit is required for fires of these types.

6.3 **Agricultural Open Burning:** The burning of cover vegetation for the purpose of preparing the soil for crop production, weed control, maintenance of water conveyance structures related to agricultural operations, and other agricultural cultivation purposes. The open burning of animal parts or carcasses is not agricultural open burning, nor is the open burning of household trash, wood, and yard debris on agricultural land.

6.4 **Burn manager:** An individual who obtains a valid open burning permit in order to plan, build, control, extinguish, and otherwise supervise the open burning of slash.

6.5 **Burn Boss:** An individual who has completed the Colorado Department of Fire Prevention and Control or National Wildfire Coordinating Group (NWCG) Certified Burner course and is a registered Certified Prescribed Burn Boss in accordance with Senate Bill 13-083, ("Colorado Prescribed Burning Act").

6.6 **Fireworks:** As defined in C.R.S. §12-28-101(3)(a), including any composition or device designed to produce visible or audible effect by combustion, deflagration, or detonation, and that meets the definition of articles pyrotechnic, permissible fireworks (per Section 12-28-101(8)(a), or display fireworks.

6.7 **Open Burn Permit:** A permit issued by the Custer County Sheriff's Office on a form furnished by the Sheriff's Office and completed by an applicant for such a permit.

6.8 **Open Burn Management Policy:** Refers to a unified plan adopted by the Board of County Commissioners for the management of open burns within the Wet Mountain Fire Protection District and also within the unincorporated areas of Custer County. A copy of this Open Burn Management Policy may be obtained from the Custer County Sheriff's Office or their website, [custercoloradosheriff.com](http://www.custercoloradosheriff.com) or may be viewed on the Custer County website : <http://www.custercountygov.com/index.php?pg=oem>

6.9 **Slash:** 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.

6.10 **Incorporated areas of Custer County:** Shall mean, for purposes of this Ordinance, the incorporated Towns of Silver Cliff and Westcliffe, which are included within the boundaries of the Wet Mountain Fire Protection District. It does not refer to the Wet Mountain Fire Protection District as an

incorporated political entity.

Section 7. Fire Restriction Guidelines

7.1 That set of evaluations criteria currently in use by local Federal, State, and Local fire suppression/management agencies for monitoring fuel moisture, fire danger class, current impacts on suppression resources, current fire types, fire weather forecasts, and other indicators of predicted fire danger.

STAGE I RESTRICTIONS: Prohibit the following activities:

- A. Open burning, building, maintaining, attending, or using a fire, or campfire, charcoal grills, pellet grills, and wood or coal burning stoves or fireplaces in undeveloped areas. Areas cleared of all flammable materials, and those within permanently constructed fire grates or developed campgrounds and picnic grounds are excepted as noted in Section 9 (Unlawful Acts).
- B. Campfires and gas fire pits contained in constructed permanent fire pits or fire grates within a developed recreation area shall be allowed.
- C. Grills using propane, pellets, and other bottled fuels shall be allowed, but only in areas free of flammable vegetation and other flammable materials, and such fires must be used and maintained in such a manner that no fire danger is presented to the surrounding area.
- D. All open fires allowed by subparagraphs (B) and (C) above must be attended at all times, and an adequate water supply and/or a fire extinguisher shall be on site at all times while such an open fire is burning.
- E. All burning of trash, refuse or debris shall be temporarily suspended.
- F. Smoking shall be temporarily suspended except within an enclosed vehicle, building, or outdoor smoking area that is hard-surfaced or barren or otherwise cleared of all flammable vegetation or material. Discarding smoking materials in a receptacle not designed for disposal of smoking materials, discarding smoking materials from a moving or stationary motor vehicle, and discarding smoking materials in any other outdoor location is expressly prohibited at all times.
- G. The use of explosive materials including fireworks, solid fuel rockets, blasting caps, or any other incendiary device which may result in the ignition of flammable materials shall be temporarily suspended.
- H. Outdoor welding, grinding, or use of any type of torch in any area which presents the possibility of igniting vegetation or other combustible material shall be temporarily suspended unless there is an adequate water supply and/or fire extinguisher on site.
- I. Operating any outdoor equipment or machinery with an internal combustion engine in an undeveloped area shall be temporarily suspended unless said equipment or machinery is equipped with a spark arresting device properly installed, maintained, and in good working order.
- J. The sale, possession and use of fireworks, including permissible fireworks as defined in C.R.S. §30-15-401(1)(n.7).

STAGE II RESTRICTIONS: Prohibit the following activities:

All the prohibited activities set forth in the Stage I Fire Ban shall be in effect and, in addition, the following restrictions shall also be in effect:

- A. Building, maintaining, attending, or using a fire, campfire, coal-burning or wood- burning stove, charcoal-fueled or wood-fueled cooking, or other open fires of any type at any location shall be temporarily suspended.
- B. Grills using propane, pellets, or other bottled fuels shall be allowed only in areas free of flammable vegetation and other flammable materials and must be used in a manner which presents no fire danger to the surrounding area. Portable stoves, gas grills, and propane gas devices are still permitted on forest land. Aka – propane fire pits with on/off valves.
- C. No grill in use shall be left unattended, and there shall be an adequate water supply and/or a fire extinguisher on site during such use.
- D. Use of a coal-burning or wood-burning stove or fireplace in a private residence shall be 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.
- E. Off-road use or parking of a motor vehicle in an area which presents the possibility of sparks or exhaust heat igniting surrounding flammable vegetation shall be temporarily suspended during the period of time a Stage II Fire Ban is in effect.

STAGE III RESTRICTIONS: Prohibit the following activities:

All the restrictions set forth in the Stage I and Stage II Fire Bans shall be in effect, and all open burning of any kind shall be prohibited. In addition, the Board of County Commissioners shall have the authority to temporarily close an area to entry or use.

Areas of public lands subject to a Stage III Fire Ban shall be closed to all entry except for individuals carrying written permits from the Custer County Sheriff, federal state and local officers, members of organized search and rescue or firefighting forces performing official duties, and resident landowners and lessees and their invitees and agents.

EXCEPTIONS TO STAGE ONE, TWO AND THREE RESTRICTIONS

The following shall be exceptions to the prohibited activities:

- A. Agricultural burning by an agricultural producer on property owned by the agricultural producer unless there is a Red Flag Warning in effect as determined by the National Weather Service.
- B. Fireworks displays properly permitted pursuant to §30-15-401, C.R.S.
- C. 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 8. NO OPEN BURNING WHEN RED FLAG WARNING IS IN EFFECT

8.1 No person shall initiate or continue an open fire in all areas of Custer County on a day identified by the National Weather Service as a "Red Flag Warning" period. This includes areas any part of Custer County which is located both outside of, and within fire protection boundaries; any existing burn projects must be extinguished under "Red Flag Warning" restrictions. Stage 2 Restrictions shall be in place during Red Flag Warning periods and open fire and burning during a red flag warning period shall be treated as a violation of Stage 2 burn restrictions as noted in Section 7.

SECTION 9. UNLAWFUL ACTS

9.1 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 and incorporated areas of Custer County, including public, private, state and federal lands, when the same is prohibited by a Stage I, Stage II or Stage III fire ban being in effect.

9.2 It shall further be unlawful for any person to conduct open burning activities at any time without a valid permit issued by the Custer County Sheriff, or to conduct such open burning activities that do not conform to the terms and provisions of the specific permit issued.

9.3 It shall further be unlawful for any person to leave an open fire or open burning activity of any type unattended at any time, regardless of whether or not a fire ban is in effect and regardless of whether or not a permit was required for such open fire or open burning activity.

9.4 It shall further be unlawful for a burn manager to conduct any open burning activity without giving the required notice to individuals with respiratory conditions and to contiguous landowners as set forth in Section 10.3 below.

SECTION 10. PERMITTED OPEN BURNING

10.1 Any person who desires to use an open burning method to dispose of slash piles shall be required to obtain a permit from the Custer County Sheriff prior to conducting any open burning method for such disposal. This includes agricultural burns of slash. Any open burning of slash piles shall strictly comply with all conditions imposed by the Sheriff as indicated in the permit issued.

10.2 All open burn permits issued by the Sheriff shall be valid for a period of 12 months from the date of issuance, with the express condition that the burn manager shall notify the Sheriff each time before conducting any open burning operations pursuant to the permit that such open burning is about to occur. With respect to the notice requirement set forth in part 3 below, it shall be sufficient for the burn manager to give the required notice to individuals with respiratory conditions and to all contiguous landowners one time that he/she has obtained a permit, the date the permit was issued, that the permit is valid for a period of 12 months, and that no further notice will be given prior to open burning operations being conducted.

10.3 C.R.S. §30-15-401 (n.5)(2)(F), requires the Board of County Commissioners to include a mechanism “to notify individuals with respiratory conditions, if requested by the individual, and contiguous landowners of the date, time, and location of slash pile burns.” Therefore, the Custer County Sheriff shall maintain a registry of any such individuals with respiratory conditions who have advised the Sheriff’s Office in writing that they wish to be notified in advance of permitted slash pile burns. This registry shall be made available to all burn managers who apply for an open burning permit. It is the responsibility of the burn manager to review this registry and to identify any individuals who reside within a one-mile radius of the location where the open burning is to occur. Any individuals with respiratory conditions so identified shall be notified by the burn manager that an open burning permit has been issued. Such notice shall be accomplished in one of three ways: by speaking to the individual(s) with the respiratory condition(s) personally; by telephone call; by posting a written notice in a conspicuous location at the residence of the individual(s) if such individual(s) cannot be otherwise contacted. It shall also be the responsibility of the burn manager to determine the identity of the contiguous landowners and to give them notice of the burn permit in the same manner as set forth above for individuals with respiratory conditions. Compliance with this Section by the burn manager shall be deemed sufficient if he/she certifies in writing or by verbal confirmation with the Custer County Sheriff’s Office that the required notices have been given or will be given that an open burning permit has been issued. The permit application utilized by the Sheriff’s Office shall include a specific certification provision and shall recognize that open burning permits may be issued to burn managers in person or by telephone request.

10.4 When issuing open burning permits, the Sheriff shall give due consideration to safe burning conditions at the burn location, shall impose appropriate permit limitations concerning the number of slash piles that may be burned at one time per person who is managing the burn, the size of the slash piles, the temperature, humidity, snow cover, and wind conditions, the existence of any overhead lines or other utility facilities, fuel type and moisture content, slope, setbacks from physical structures, and a readily available and usable water source.

SECTION 11. PENALTIES

11.1 Any person who commits a violation 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) for each separate offense. In addition, persons convicted of a violation of this Ordinance shall be subject to a surcharge of ten dollars (\$10) pursuant to C.R.S. §30-15-402(1).

11.2 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.

11.3 The penalty assessment graduated fine schedule for such penalty assessment procedure shall be as follows;

- a) Two hundred fifty dollars (\$250) for the first offense;
- b) Five hundred dollars (\$500) for the second offense within sixty (60) days of the first offense;
- c) Seven hundred fifty dollars (\$750) for the third offense within sixty (60) days of the first offense;
- d) One Thousand Dollars (\$1,000) for each additional offense within sixty (60) days of

the first offense.

- e) 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).

11.4 The penalty assessment procedure set forth in §16-2-201, C.R.S., shall be followed by law enforcement officers charged with enforcement of this Ordinance.

11.5 All fines assessed for violations of this Ordinance shall be paid to the Treasurer of Custer County. All revenues generated through the payment of such fines shall be paid into the general fund and shall be allocated as follows: 40% to the Custer County Sheriff's Office, 40% to the Wet Mountain Fire Protection District, and 20% to the Custer County general fund.

SECTION 12. DECLARATION OF AN OPEN FIRE BAN

12.1 The Custer County Board of County Commissioners or the Custer County Sheriff, or his designee Deputy Fire Warden, shall have the authority to declare an open fire ban whenever the danger of forest and grass fires is found to be high, and without further proceedings or resolution. Any declaration of an open fire ban made pursuant to this section shall specify the Stage level restriction, the parameters of the ban and the duration of the ban as deemed necessary and appropriate, and shall be promptly published through a general press release to local radio, print media, as well as posting on the Custer County internet websites and social media. 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.

SECTION 13. ENFORCEMENT

13.1 This ordinance shall be enforced by the Sheriff, through his deputies in conjunction with fire code officials and upon receipt of a statement of probable cause, the Fire Chief or any fire protection district or their designee, the administering agencies of the state and federal lands located therein, or Fire Chief or his designee of any incorporated city or town that adopts this Ordinance, and any peace officer in and for the State of Colorado as described in C.R.S. § 16-2.5-101, and they shall have authority to order any person to immediately cease any violation of this Ordinance. This authority shall include, but is not limited to, the right to issue a penalty assessment notice and the right to take such a person or persons into temporary custody.

SECTION 14. EFFECTIVE DATE

14.1 This Ordinance shall be effective immediately following adoption on second reading and shall apply to all open burning violations occurring or committed on or after said date.

SECTION 15: REPEAL OF PRIOR ORDINANCES

15.1 Upon the effective date of this Ordinance, all prior fire ban ordinances or fire restriction ordinances including, but not limited to, Ordinance No. 15-2, shall be deemed repealed and shall be of no further validity or effect.

INTRODUCED, READ, AND ADOPTED ON FIRST READING ON THE 1st DAY OF JULY, 2019, AND ORDERED PUBLISHED IN THE WET MOUNTAIN TRIBUNE.

The Board of County Commissioners for Custer County, State of Colorado



Tommy G. Flower, Chairman



Jay D. Printz



William R. Canda



Kelley Camper, County Clerk and Recorder



ADOPTED ON SECOND AND FINAL READING ON THE 31st DAY OF JULY 2019, AND ORDERED PUBLISHED BY REFERENCE TO TITLE ONLY IN THE WET MOUNTAIN TRIBUNE.

The Board of County Commissioners for Custer County, State of Colorado



Tommy G. Flower, Chairman



Jay D. Printz



William R. Canda



Kelly Camper, County Clerk and Recorder

