

Ordinance No. 15-02

AN ORDINANCE OF CUSTER COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, REGULATING AND RESTRICTING OPEN FIRES AND OPEN BURNING IN THE UNINCORPORATED AREAS OF CUSTER COUNTY, AND ALSO INCLUDING THE INCORPORATED TOWNS OF SILVER CLIFF AND WESTCLIFFE

and

ESTABLISHING A PERMITTING REQUIREMENT FOR SLASH PILE BURNING AND OTHER OPEN BURNING IN THE UNINCORPORATED AREAS OF CUSTER COUNTY, AND ALSO INCLUDING THE INCORPORATED TOWNS OF SILVER CLIFF AND WESTCLIFFE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, THAT:

Whereas, §30-15-401(1)(n.5), C.R.S., authorizes the Board of County Commissioners to ban open fires to a degree and in a manner that the Board deems necessary to reduce the dangers of wildfires within those areas of Custer County where the danger of forest or grass fires is found to be high based on competent evidence; and

Whereas, the Board of County Commissioners deems it is in the best interest of the citizens of Custer County and the general public that open fires and open burning in Custer County be regulated and restricted to reduce the danger of wildfires in said county; 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, due consideration has been given to existing laws and processes regulating open burning in the State of Colorado, and the Board of County Commissioners finds that this Ordinance is consistent with all such laws and processes; and

Whereas, the Board of County Commissioners finds that 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, the Board of County Commissioners finds and declares as follows:

PART ONE: STATEMENT OF PURPOSE AND SCOPE

Section 1: This Ordinance shall be known as the “Custer County Open Fire and Open Burning Ordinance”.

Section 2: The purpose of this Ordinance is to preserve and protect the public health, safety and welfare of the citizens of Custer County by restricting open fires and open burning in Custer

County at certain times in order to prevent forest and prairie fires when a high danger of such fires exists.

Section 3: This Ordinance shall apply throughout all 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 4: The Board of County Commissioners hereby declares that there shall be three stages of fire bans that 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 one or more of these three stages of fire bans may be in effect.

Section 5: At any regularly scheduled meeting or special meeting of the Board of County Commissioners, the Board may, by resolution, impose Stage I, Stage II or Stage III restrictions based upon a finding that the danger of forest fires or grass fires occurring in Custer County is high. Such a resolution shall be based on competent evidence which may include:

- a. The recommendation of the Custer County Sheriff;
- b. The recommendation of the Fire Chief of the Wet Mountain Fire Protection District;
- c. The recommendation of the Fire Chief of the Rye Fire Protection District;
- d. The recommendation of any other recognized firefighting entity providing assistance to Custer County for the suppression of forest fires and grass fires;
- e. Any similar ban imposed under the authority of the Governor of the State of Colorado;
- f. Any recommendation from the State Forest Service, the National Park Service, the United States Forest Service, or any other agency of the state or federal government;
- g. A similar ban imposed in any county adjacent to Custer County.

Section 6. Any such resolution imposing a fire ban shall specify whether Stage I restrictions, Stage II restrictions or Stage III restrictions shall be in effect and shall further specify whether the restrictions are in effect for all areas of Custer County or for a specific portion thereof.

Section 7: Any such resolution shall specify an expiration date for the ban. However, the ban may be extended in the same manner as its original imposition upon competent evidence that the wildfire danger continues.

Section 8: Any resolution imposing a fire ban pursuant to this Part One shall be promptly published through a general press release to local media outlets and shall also be posted on the Custer County internet website. The Custer County Office of Emergency Management shall be notified immediately upon imposition of any fire ban. Likewise, when restrictions are in effect and when changing conditions indicate that a reduction or increase in any such restrictions

should be imposed, the same notification to the public and to the Custer County Office of Emergency Management shall occur.

Section 9: Custer County has also approved an Open Burn Management Policy to serve as a unified plan for management of open burns throughout the Wet Mountain Fire Protection District and the unincorporated areas of Custer County. This Open Burn Management Policy is incorporated into this Ordinance by reference and is intended to be a supporting document to this Ordinance. Any changes that may be made to this Open Burn Management Policy from time to time to accommodate the changing needs of Custer County shall be automatically incorporated into this Ordinance without the necessity of further action by the Board of County Commissioners to modify or amend this Ordinance. To the extent that any inconsistencies may exist between the provisions of this Ordinance and the provisions of the Open Burn Management Policy, the provisions of this Ordinance shall prevail.

PART TWO: DEFINITIONS

“Agricultural Open Burning” means 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.

“Burn manager” means an individual who obtains a valid open burning permit in order to plan, build, control, extinguish, and otherwise supervise the open burning of slash.

“Competent evidence” includes the use of the national fire danger rating system and any other similar indices or information.

“Fireworks” shall be defined as set forth in §12-28-101, C.R.S.

“Open Fire” is 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 and brands, and the outdoor burning of trash and debris. No permit is required for open fires of these types.

“Open Burning” means 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.

“Open Burn Permit” means 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.

“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 may be viewed on the Custer County Office of Emergency Management’s website: ccoem@custercountygov.com.

“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.

“Special meeting” means a meeting of the Board of County Commissioners called by the Chairman or Acting Chairman of the Board when an emergency situation exists based on competent evidence from the Custer County Sheriff or the Fire Chief of the Wet Mountain Fire Protection District that the danger of a forest fire or grass fire is high and an immediate temporary ban is essential. Such special meeting shall be conducted in person or by telephonic conference and shall be recorded by the clerk of the Board. A temporary ban so issued shall be ratified at the next regular meeting of the Board of County Commissioners.

“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.

PART THREE: STAGE I, II AND III FIRE BANS

Stage I Fire Ban: When the Board of County Commissioners imposes a Stage I Fire Ban the following restrictions are imposed on open fires and open burning:

- a. Building, maintaining, attending or using a fire, campfire, coal or wood stove, fireplace, any type of charcoal-fueled or wood-fueled cooking, or open fire of any type shall be temporarily suspended in all undeveloped areas.
- b. Campfires contained in constructed permanent fire pits or fire grates within a *developed* recreation area shall be allowed.
- c. Grills using propane 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.
- g. 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.
- h. 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.
- i. 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.
- j. 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.
- k. The sale, possession and use of fireworks, including permissible fireworks as defined in §12-28-101, C.R.S., shall be temporarily suspended during the imposition of a Stage I Fire Ban. Such a restriction on fireworks within all or any portion of the unincorporated or incorporated areas of Custer County shall not last longer than a period of one year, and shall not be in effect between May 31 and July 5 of each year unless there is an express finding of a high fire danger by resolution of the Board of County Commissioners based on competent evidence as that term is defined herein.

Stage II Fire Ban: When the Board of County Commissioners imposes a Stage II Fire Ban, 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 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.

- 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.

*National Fire Protection Association

Stage III Fire Ban: When the Board of County Commissioners imposes a Stage III Fire Ban, 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 shall have the authority to temporarily close an area to entry or use. Such action will have an extreme impact on the public and on the responsible firefighting agencies and will not be considered except under the most severe conditions. Closures are justified by fire danger alone, but should be driven by the potential for imminent 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.

Some examples of such situations where a Stage III Fire Ban may be necessary are:

- a. Potential loss of life due to explosive fire conditions;
- b. Potential for extreme or blow-up fire behavior;
- c. Stage I or Stage II Fire Bans are ineffective in reducing the number of human-caused fires;
- d. Resources for fighting wildfires across the geographic area are at a critical shortage level;
- e. The extent of wildland urban interface.

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.

PART FOUR: EXCEPTIONS TO STAGE ONE, TWO AND THREE RESTRICTIONS

Section 1. The following shall be exceptions to the prohibited activities set forth in Part Three:

- 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 §12-28-103, 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.

PART FIVE: PERMITTED OPEN BURNING

Section 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.

Section 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 Section 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.

Section 3: §30-15-401 (n.5)(2)(F), C.R.S., 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 3 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.

Section 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.

PART SIX: UNLAWFUL ACTS

Section 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.

Section 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.

Section 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.

Section 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 3 of Part Five.

PART SEVEN: PENALTIES

Section 1. Any person who commits a violation of an open fire or open burning ban imposed under the authority of this Ordinance commits a class 2 petty offense under §30-15-402(1), C.R.S., and upon conviction thereof shall be punished by a fine as follows:

- a. Two hundred fifty dollars (\$250) for violation of a Stage I ban.
- b. Five hundred dollars (\$500) for violation of a Stage II ban.
- c. Seven hundred fifty dollars (\$750) for violation of a Stage III ban.

Section 2. A violation of the permit requirement as set forth in Section 2 of Part Five shall be punished by a fine of two hundred fifty dollars (\$250).

Section 3: Any person who violates Section 3 of Part Six by leaving an open fire or an open burning activity unattended shall be guilty of a class 2 petty offense and shall be punished by a fine of two hundred fifty dollars (\$250).

Section 4: Any burn manager who violates the notice provision of Section 3 of Part 5 shall be guilty of a class 2 petty offense and shall be punished by a fine of two hundred fifty dollars (\$250).

Section 5. In addition, persons convicted of a violation of this Ordinance shall be subject to a surcharge of ten dollars (\$10) pursuant to §30-15-402(1), C.R.S.

Section 6. 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.

Section 7. 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.

PART EIGHT: EFFECTIVE DATE

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.

PART NINE: REPEAL OF PRIOR ORDINANCES

Upon the effective date of this Ordinance, all prior fire ban ordinances or fire restriction ordinances including, but not limited to, Ordinance No. 2002-1, shall be deemed repealed and shall be of no further validity or effect.

INTRODUCED, READ AND ADOPTED ON FIRST READING ON THE 9th DAY OF JUNE, 2015, AND ORDERED PUBLISHED IN THE SANGRE DE CRISTO SENTINEL.

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

Christopher L. (Kit) Shy, Chairman

Lynn Attebery

Robert Kattnig

SEAL:

ATTEST:

Debbie Livengood, County Clerk and Recorder

ADOPTED ON SECOND AND FINAL READING ON THE 30th DAY OF JUNE, 2015, AND ORDERED PUBLISHED BY REFERENCE TO TITLE ONLY IN THE SANGRE DE CRISTO SENTINEL.

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

Christopher L. (Kit) Shy, Chairman

Lynn Attebery

Robert Kattnig

SEAL:

ATTEST:

Debbie Livengood, County Clerk and Recorder