

ORDINANCE NO. 22-01

**AN ORDINANCE ESTABLISHING AN OPEN BURN PERMIT SYSTEM,
NOTIFICATION PROCESS OF OPEN BURNS, AND RESTRICTIONS DURING RED
FLAG DAYS, HIGH WIND WATCH DAYS AND HIGH WIND WARNING DAYS**

WHEREAS, pursuant to § 30-15-401, C.R.S., the Board of County Commissioners (“the Board”) has the power to adopt ordinances for control of those matters of local concern; and

WHEREAS, § 30-15-401(1)(n.5), C.R.S., grants the Board the specific authority to ban open fires to a degree and in a manner that the board of county commissioners deems necessary to reduce the danger of wildfires within those portions of the unincorporated areas of the county where the danger of forest or grass fires is found to be high based on competent evidence; and

WHEREAS, the Board finds that the reduction of hazardous fuels on public and private land within Huerfano County reduces the threat of wildfire and improves the health of forest land in Huerfano County; and

WHEREAS, the disposal by burning of slash material aids in the reduction of hazardous fuels in forested areas and reduces the threat of unwanted wildfire; and

WHEREAS, the Board finds that those days on which the National Weather Service declares in Huerfano County a high wind watch day, a high wind warning day, a fire weather watch day or a red flag warning day, such declaration constitutes competent evidence of the existence of a high danger of forest or grass fires; and

WHEREAS, the Board finds it to be prudent and necessary to require notification to first responders before open burning and to provide penalties for failure to follow the requirements of the open burn permitting and notification process, as well as penalties for violating fire restrictions; and

WHEREAS, the Emergency Manager and staff within the Emergency Services Department have worked in collaboration with the fire protection districts and the Sheriff to develop this Ordinance.

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

Section 1. Title.

This ordinance shall be known and referred to as the “Huerfano County Burn Ordinance”

Section 2. Purpose, Intent, and Applicability.

1. The purpose of this Ordinance is to preserve and protect the public health, safety, and welfare of the residents of Huerfano County, Colorado, by restricting open fires and open burning in the unincorporated areas of Huerfano County to prevent forest and grass fires given the high danger of such fires because of atmospheric conditions, including lack of moisture, and other local conditions in the County.

2. It is hereby declared to be the policy of Huerfano County and the intent of this ordinance to establish a permitting system that will:
 - a. Allow and regulate open and safe burning of slash;
 - b. Inform residents, visitors, and property owners of considerations for the appropriate, safe, and effective use of fire as a tool; and
 - c. Reinforce knowledge of local requirements of fire protection districts and county ordinances to increase public awareness and protect the public health, safety, and welfare.
3. This ordinance shall apply in the unincorporated areas of Huerfano County. Excluding Municipalities, unless they adopt this Ordinance, as well as State and Federal lands.

Section 3. Definitions.

For the purposes of this ordinance, the below words and phrases will have the following meanings ascribed to them:

1. **Agricultural Burning:** Burning of cover vegetation for the purpose of preparing the soil for crop production, weed control, or maintenance of water conveyance structures related to agricultural operations.
2. **Broadcast Burn:** The controlled application of fire to wildland fuels in their natural or modified state over a predetermined area. Broadcast Burns do not include the burning of wildland fuels that have been concentrated in piles by manual or mechanical methods.
3. **Burn Plan:** Burn plans are an important component of any open broadcast burn. A burn plan is a written document that, at a minimum, provides a description of the burn area, target weather conditions, hazards that may be encountered, personnel and safety needs, contacts to make prior to burning, goals and objectives, burn site description, fire prescription, fire operation, and control and cleanup.
4. **Extinguished:** No visible flame, smoke, or emissions exist.
5. **Fire Weather Watch:** Conditions are favorable for red flag conditions in and close to the watch area in the next 12 to 48 hours, as defined by the National Weather Service.
6. **Fire Weather Zone:** Two fire zones within Huerfano County have been determined by the National Weather Service based upon elevation and weather patterns associated with the fuels and terrain located within these elevation ranges. These include: Fire Weather Zone 225 and Fire Weather Zone 229.
7. **High Wind Warning:** One-minute average surface winds of 35 kt (40 mph or 64 km/hr) or greater lasting for 1 hour or longer, or winds gusting to 50 kt (58 mph or 93 km/hr) or greater regardless of duration that are either expected or observed over land.
8. **High Wind Watch:** Conditions that are favorable for high winds in and close to the watch area in the next 12 to 48 hours.
9. **Open Burning:** A fire started and intentionally used for grassland or forest management, including vegetative, habitat, or fuel management. Open burning includes both broadcast and pile burning and does not include agricultural burning.
10. **Open Burning Permit:** A permit developed jointly with the fire protection districts having jurisdiction within Huerfano County and issued by the County with the consent of the fire protection districts.
11. **Person:** Any individual, association, organization, partnership, firm, corporation, business, or other entity recognized by law.
12. **Prescribed Burning:** The controlled application of fire in accordance with a written prescription for wildland fuels under specified environmental conditions while following

appropriate precautionary measures that ensure that the fire is confined to a predetermined area to accomplish the planned fire or land-management objectives.

13. **Red Flag Warning:** A forecast warning issued by the National Weather Service to inform area firefighting and land use management agencies that conditions are ideal for wildland fire ignition and propagation.
14. **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.
15. **Stage 1 Fire Restrictions:** Prohibits the following activities:
 - a. Building, maintaining, attending or using a fire or campfire except within permanently constructed burn barrels, fire grates in developed/improved campgrounds and picnic grounds or private residences in areas cleared at least 6' of all flammable materials. Rock campfire rings and fire pans are considered temporary and are not acceptable. Devices using gas, jellied petroleum, or pressurized liquid fuel are permitted.
 - b. Smoking, except 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. Possessing, discharging or using any type of fireworks or other pyrotechnic device to include sparklers. This does not differentiate between lawful use or careless/negligent use of fireworks but prohibits all fireworks activity and use on public and private lands.
 - d. Operating a chainsaw without a USDA or SAE approved spark arrester properly installed and working, a chemical fire extinguisher of not less than 8 ounces capacity by weight, and one round point shovel with an overall length of at least 36 inches.
 - e. Using an explosive or exploding targets.
 - f. Using a welder, either arc or gas, or operating acetylene or other torch with open flame, except in cleared areas of at least 10 feet in diameter with a chemical pressurized fire extinguisher of not less than 8 ounces capacity.
16. **Stage 2 Fire Restrictions:** Prohibits all activities prohibited by Stage 1 Fire Restrictions as well as the following activities:
 - a. Building, maintaining, attending, or using a fire or campfire.
 - b. Smoking, except within an enclosed vehicle or building.
 - c. Operating a chainsaw or other equipment powered by an internal combustion engine between 1:00 p.m. to 1:00 a.m.
 - d. Welding, or operating an acetylene or other torch with open flame.

Section 4. Unlawful Acts.

1. No person shall conduct open burning within the unincorporated areas of Huerfano County, including private and County property, without first having obtained an Open Burning Permit from Huerfano County.
2. No person shall conduct open burning or agricultural burning without prior notification to the Huerfano County Emergency Dispatch.
3. Engaging in any activity prohibited when Stage 1 or Stage 2 Restrictions are in effect, other than as excepted or exempted, in the unincorporated areas of Huerfano County.

Section 5. Exceptions and Exemptions.

The following are permitted and are not in violation of Section 4:

1. During Stage 1 Restrictions
 - a. Open Burning conducted with an approved Open Burning Permit
 - b. Smokeless flares or safety flares for the combustion of waste gasses.
 - c. Flares used to indicate danger.
 - d. All prescribed burns will be reviewed and approved by a qualified representative from the respective jurisdiction.
2. During Stage 2 Restrictions
 - a. Fires in developed campgrounds and picnic grounds, or private residences contained within stoves, fire pits or appliances that are fueled by liquid propane or natural gas and cleared at least 3 feet of all flammable materials, with flames lengths not exceeding 2 feet. The flame must be completely and immediately extinguished by activation of a switch, valve, and/or tip over safety switch.
3. If fire is a requirement to do business or if a chainsaw work is necessary (for example, a barbecue restaurant or welding shop/mitigation work), then said business must mitigate their property to meet guidelines set by, or have the written approval of, the fire protection district having jurisdiction commensurate with the size and location of fire and the level of fire restriction enacted.
4. Any federal, state, or local officer, or member of an organized rescue or firefighting force, in the performance of an official duty.

Section 6. Implementation of Fire Restriction Stages.

1. Stage 2 Fire Restrictions will be automatically implemented while a fire weather watch, red flag warning, high wind watch, or high wind warning is in effect.
2. The Emergency Manager shall monitor fire danger conditions and coordinate with Federal, State, and local fire agencies to determine the appropriate stage of restrictions. When conditions merit that Stage I Restrictions should be enacted, or that restrictions should be upgraded to Stage II Restrictions, the Emergency Manager will advise the Board of County Commissioners to implement such restrictions. The Emergency Manager will similarly advise the Commissioners to suspend such restrictions as the conditions merit.
3. Should conditions merit action with immediate effect, the Sheriff is authorized to implement or suspend Fire Restrictions on the advice of the Emergency Manager for later ratification by the BOCC.
4. When Fire Restrictions are enacted the Emergency Manager will coordinate notification of the public through a general press release to local television, radio and print media, as well as posting on the Huerfano County website and through social media outlets. Likewise, when there is a reduction in restrictions from Stage II to Stage I, or the suspension of restrictions, the same notification to the public shall occur.

Section 7. Permitting Process.

The Emergency Manager is authorized and directed to establish a joint permitting process with the Fire Protection Districts and the advice and consent of the County Administrator. Any such process must meet the following conditions:

1. No fee may be charged for the permits
2. The fire protection district having jurisdiction must agree to issuance of the permit.
3. The person issued a permit must inform Huerfano County Emergency Dispatch before the burn is started and upon completion.
4. The Emergency Manager and Fire Chiefs maintain the discretion to suspend or revoke any

permit upon a violation of this Ordinance or upon finding it is in the interests of public safety to revoke said permit.

Section 8. Enforcement, Violations, and Penalties.

1. Violation of this Ordinance shall constitute a Civil Infraction. Violations of this Ordinance may be enforced through the penalty assessment procedure set forth in Section 16-2-201, C.R.S.
2. The following are authorized to issue citations, summons, and complaints for violation of this Ordinance.
 - a. Any Law Enforcement Officer or Code Enforcement Official of Huerfano County.
 - b. Any Official of a Fire Protection District in Huerfano County.
 - c. Any Code Enforcement Official of a municipality that adopts this Ordinance.
3. It is the duty of the Huerfano County Sherriff, Undersheriff, and deputies to enforce this ordinance as provided for in 30-15-410, C.R.S.
4. The graduated fine schedule for the penalty assessment procedure is as follows:
 - a. \$50.00 for the first violation.
 - b. \$250.00 for the second violation.
 - c. \$1000.00 for each successive violation.
5. Persons convicted of violating this ordinance are subject to the surcharges identified in § 30-15-402, C.R.S.
6. In addition to any other penalty, persons convicted of a violation of this Ordinance shall pay the customary courts costs when applicable.
7. All fines and penalties shall be deposited into the General Fund of Huerfano County and distributed annually to the Fire Protection Districts on the basis of number of permits issued in the proceeding calendar year.
8. It is the responsibility of the County Attorney to enforce the provisions of this Article, according to the County Court Rules of Criminal Procedure.
9. The Board of County Commissioners may seek civil relief, including but not limited to injunctive relief and mandamus, to enforce the provisions of this Ordinance.
10. Any person who violates the terms and conditions of a permit issued under this Ordinance or who violates this ordinance and causes a fire that requires response from the local fire protection district must provide restitution to any and all responding agencies. Such restitution shall consist of all costs and expenses incurred by the local fire protection district responders incurred as a result of the fire.

Section 9. Liability.

1. The adoption of the Ordinance codified in this document shall not create any duty to any person, firm, corporation, or any other entity with regard to enforcement or nonenforcement of this Ordinance. No person, firm, corporation, or other entity shall have any civil liability remedy against the Huerfano County Board of County Commissioners or Huerfano County Sheriff, their officers or agents for any damage(s) arising out of, or in any way connected with the adoption, enforcement or non-enforcement of this Ordinance.
2. Nothing in this Ordinance shall be construed to create any liability or to waive any of the immunities, defenses, limitations or liability, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S. or to wave any immunities, or defenses or limitations on any liability otherwise available to each entity, agency, governmental body, it's officers, employees and agents.

Section 10. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Huerfano County Board of County Commissioners hereby declares that it would have passed this Ordinance irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

Section 11. Recording.

INTRODUCED, READ, and ORDERED PUBLISHED in full on first reading the 5th day of April, 2022.

READ, ADOPTED, and ORDERED PUBLISHED in full on this 12th day of July, 2022. This Ordinance will become effective 30 days after publication.

BOARD OF COUNTY COMMISSIONERS
OF HUERFANO COUNTY, COLORADO

DocuSigned by:
Gerald Cisneros
BY _____
Gerald A. Cisneros, Chairman

DocuSigned by:
John Galusha

John Galusha, Commissioner

DocuSigned by:
Arica Andreatta 1

Arica Andreatta, Commissioner

ATTEST:

DocuSigned by:
Nancy Cruz

Nancy Cruz, County Clerk and Recorder and
Ex-Officio Clerk to said Board