

**Ordinance #2009 – 001**

Kiowa County Open Fire and Open burning Restriction Ordinance

**AN ORDINANCE RESTRICTING OPEN FIRES AND OPEN BURNING IN THE UNINCORPORATED AREAS OF KIOWA COUNTY, COLORADO.**

**WHEREAS**, the Board of County Commissioners of Kiowa County, Colorado, pursuant to Section 30-11-107, *et seq.*, 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 Kiowa County, Colorado; and

WHEREAS, pursuant to Section 30-15-401 (1) (n.5), C.R.S., 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, Section 30-15-405, 406 and 407, C.R.S., provides the process for Boards of County Commissioners to utilize when adopting an ordinance; and

WHEREAS, the Sheriff of Kiowa County (hereinafter "Sheriff") is authorized under the provisions of Section 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 thereof or to assist other governmental authorities in controlling or extinguishing forest or prairie fires; and

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

WHEREAS, the Sheriff, Emergency Manager, and Fire Chiefs throughout the County have advised the Board that atmospheric conditions, including lack of moisture and other local conditions, may create a high danger of forest and prairie fires in Kiowa County, thereby making open fires and open burning within the unincorporated areas of Kiowa County hazardous; and

WHEREAS, the Sheriff, Emergency Manager, and Fire Chiefs throughout the County monitor fire weather conditions and fire danger ratings, such as the U. S. Forest Service and Colorado State Forest Service rating systems; and

WHEREAS, changing atmospheric conditions require that fire restrictions need to be implemented and/or released in a timely manner; and

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

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

SECTION 1: TITLE

This Ordinance shall be known and referred to as the "Kiowa County Open Fire and Open Burning Restriction Ordinance" and may be cited 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 Kiowa County, Colorado, by restricting open fires and open burning in the unincorporated areas of Kiowa 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 Kiowa County.

SECTION 3: AUTHORITY

This Ordinance is authorized by various Colorado Statutes, *inter alia*, generally; Part 1 of Article 11 of Title 30, and Part 4 of Article 15 of Title 30, and specifically Section 30-15- 401(l)(n.5) of Colorado Revised Statutes.

SECTION 4: INTERPRETATION

This Ordinance shall be so interpreted and construed as to effectuate its general purpose to preserve and protect the public health, safety and welfare of the citizens of Kiowa County, Colorado, by restricting open fires and open burning in the unincorporated areas of Kiowa County in order to prevent forest and prairie fires given the high danger of such fires in Kiowa County. Section headings and any cross references, if any, of this Ordinance shall not be deemed to govern, limit, modify or affect in any manner the scope, meaning or extent of the provisions of this Ordinance or any section thereof.

SECTION 5: APPLICATION

This Ordinance shall apply throughout the unincorporated areas of Kiowa County including public, private, state and federal lands and to any incorporated town or city which elects by ordinance or resolution to have the provisions thereof apply.

## SECTION 6: DEFINITIONS

Fire Restriction Evaluation Guidelines: That set of evaluation criteria currently in use by Federal, State and local fire suppression/management agencies for monitoring fuel moistures, fire danger class, current impacts on suppression resources, current fire cause types, fire weather forecasts, and other indicators of predicted fire danger.

Fireworks: As defined in Section 12-28-101 (3) (a), C.R.S., including any composition or device designed to produce a 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.

Open fire or opening burning: For purposes of this Ordinance, open fires or open burning 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 types, burn barrels, and the prescribed burning of irrigation or drainage ditches, fence lines or rows, fields, farmlands, rangelands, wild lands, trash and debris.

Stage 1 Restrictions – Prohibits the following activities:

- (1) Open burning, excepting fires and campfires within permanently constructed fire grates in developed campgrounds and picnic grounds, charcoal grills and wood burning stoves at private residences in areas cleared of all flammable materials, and those other exceptions/exemptions as noted in Section 8 hereafter;
- (2) The sale or use of fireworks (as defined above) pursuant to Section 30-15-401 (1) (n.5), C.R.S.;
- (3) Outdoor smoking except within an area of at least six feet in diameter that is barren or cleared of all flammable materials;

Stage 2 Restrictions – Prohibits the following activities:

- (1) All open burning as defined other than those exceptions/exemptions as noted in Section 8 below;
- (2) The sale or use of fireworks (as defined above) pursuant to Section 30-15-401 (1) (n.5), C.R.S.;
- (3) Outdoor smoking except within an area of at least six feet in diameter that is barren or cleared of all flammable materials;
- (4) Operating or using any internal combustion engine is not permitted on

public lands without a spark arresting device properly installed, maintained and in effective working order meeting either:

- (a) Department of Agriculture, Forest Service Standard 5100-1a;  
or
  - (b) Appropriate Society of Automotive Engineers (SAE) recommended practice J335(b) and J350(a);
- (5) Welding or operating acetylene or other similar torch with open flame unless said work is performed in an area at least thirty (30) feet in diameter that is clear of flammable vegetation and unless the worker has ready access to a fire extinguisher or water supply suitable to suppress any fire that results from the welding operation;

#### SECTION 7: UNLAWFUL ACTS

It shall be unlawful for any person to build, maintain, attend or use an open fire or conduct an open burn in the unincorporated area of Kiowa County, including public, private, State and Federal lands and to any incorporated town or city which elects by ordinance or resolution to have the provisions thereof apply.

#### SECTION 8: EXCEPTIONS/EXEMPTIONS

The following shall not be in violation of Section 7:

- (1) Commercial or community fireworks displays properly permitted;
- (2) Fires contained within liquid-fueled or gas-fueled stoves;
- (3) Indoor fireplaces and wood-burning stoves;
- (4) Outdoor charcoal grills and wood-burning stoves during Stage 1 Restrictions providing they are at private residences and in an area cleared of all flammable materials including dry vegetation;
- (5) Outdoor household trash or household waste burning during Stage 1 Restrictions provided that such burning is attended at all times and conducted completely within an incinerator or burn barrel with a covering grate that has mesh openings not greater than one (1) inch and an area of at six feet in diameter around the incinerator or burn barrel has been cleared of all flammable materials.
- (6) The burning of irrigation ditches in the designated areas is prohibited by this Ordinance EXCEPT for ditches located within and completely surrounded by irrigated farmlands where such burning is necessary for crop survival AND a specific written permit has been granted by the

Kiowa County.

- (7) Persons with a permit specifically authorizing the otherwise prohibited act or omission;
- (8) Any Federal, State or local law enforcement officer or member or an organized rescue or firefighting agency in the performance of an official duty,
- (9) Any further exemptions to either the meaning of terms or the enforcement of this Ordinance shall be granted only by the Sheriff or the Sheriff's designee or for exemptions upon or within State or Federal lands located within Kiowa County, by the administering State or Federal agency, and only if the proposed action is deemed by the Kiowa County Sheriff or the Sheriff's designee, to be safe and mitigable;

#### SECTION 9: DECLARATION OF AN OPEN FIRE BAN

The Kiowa County Sheriff or the Kiowa County Emergency Manager, as the Sheriff's designee, 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 media release to local television, radio and print media as well as through any public signage deemed appropriate. 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 10: ENFORCEMENT

This Ordinance shall be enforced by the Sheriff, through his Deputies, and/or any peace officer in and for the State of Colorado as described in Section 16-2.5-101, C.R.S., 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.

#### SECTION 11: VIOLATIONS

(1) 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 Section 30-15-402(1), C.R.S., 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 any surcharge required by law under Section 30-15-402 (2), C.R.S., as well as any Court Security Fee. Fines are to be set by the County

Court unless the violator wishes to confess guilt and, pursuant to the penalty assessment procedure, within twenty (20) days of issuance of the ticket pays the fine indicated plus any surcharge required by law as well as any Court Security Fee.

(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.

(3) Criminal prosecution may be brought against a violator in Section 30-15-402 and 3015-410, C.R.S., and under the penalty assessment procedure provided in Section 16-2-201, C.R.S. The Sheriff's Office is authorized to devise a ticketing system in conformance with Section 16-2201, C.R.S.

(4) The penalty assessment procedure provided in Section 16-2-201, C.R.S., may be followed by any arresting law officer for any such violation. The graduated fine schedule for such penalty assessment procedure shall be:

- (a) Two Hundred and Fifty Dollars (\$250.00) for the first offense;
- (b) Five Hundred Dollars (\$500.00) for the second offense within sixty (60) days of the first offense;
- (c) Seven Hundred and Fifty Dollars (\$750.00) for the third offense within sixty (60) days of the first offense;
- (d) One Thousand Dollars (\$1,000.00) 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 any surcharge required by law as well as any Court Security Fee;
- (f) Regardless of any penalty imposed under this Ordinance, persons convicted of a violation of this Ordinance shall be held liable for costs to the county for fire response, fire control, fire recovery and material damages.

## SECTION 12: DISPOSITION OF FINES

All fines paid for the violation of this Ordinance shall be in negotiable funds made payable to Kiowa County and submitted to the Kiowa County Treasurer's Office. All fines for the violation of this Ordinance received by the County shall be remitted to the Kiowa County Treasurer and deposited into the general fund, and such collected fines shall be used to improve and enhance the county's fire response capability. All surcharge dollars shall be paid by the defendant to the Clerk of the Court and credited to the Victims and Witnesses Assistance and Law Enforcement Fund of the Fifteenth Judicial District of the State of Colorado pursuant to Section 30-15-402 (2) (a), C.R.S. The defendant shall also pay Court costs, including but not limited to any surcharge required by law and Court Security Fee.

### SECTION 13: ADDITIONAL REMEDIES

The remedies provided in this Ordinance shall be cumulative and in addition to any other Federal, State or local remedies, criminal or civil, which may be available. Nothing contained herein shall be construed to preclude prosecution under any applicable statute, including, but not limited to, prosecution under Section 18-13-109, C.R.S., or any applicable local, State or Federal statute, ordinance, rule, order, or regulation.

### SECTION 14: SAFETY CLAUSE

The Board hereby finds, determines and declares that this Ordinance is necessary for the preservation and protection of the health, safety and welfare of the citizens of Kiowa County, Colorado.

### SECTION 15: PUBLICATION/EFFECTIVE DATE

The Board orders that this Ordinance be published in full in a public newspaper published in Kiowa County, Colorado, and that a second reading and adoption shall occur no less than ten (10) days after publication.

This Ordinance placing a restriction on all open fires and open burning within the unincorporated areas of Kiowa County shall be effective thirty (30) days after the final publication following passage as required by Colorado law and shall remain in effect until such time as this Ordinance is amended by the Board, or enforcement is temporarily suspended by the Board, Sheriff or his designee.

### SECTION 16: SEVERABILITY

Should any section, subsection, clause, sentence or phrase of this Ordinance be adjudged by any Court of competent jurisdiction to be invalid, such invalidity shall not affect, impair or invalidate the other provisions of this Ordinance which can be given effect without such invalid provision.

### SECTION 17: REPEAL OF CONFLICTING PROVISIONS

All former County ordinances, resolutions, rules or regulations, or parts thereof, in conflict with this Ordinance are hereby repealed.

INTRODUCED, READ AND ADOPTED ON FIRST READING on March 26, 2009, and ordered published in the Kiowa County Press.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, COLORADO.

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Donald Oswald, Chairman

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Richard Scott, Commissioner

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Rodney Brown, Commissioner

ATTEST:

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Debra C. Lening, Clerk to the Board

ADOPTED ON SECOND AND FINAL READING on April \_\_\_\_\_, 2009.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF  
KIOWA, COLORADO.

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Donald Oswald, Chairman

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Richard Scott, Commissioner

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Rodney Brown, Commissioner

ATTEST:

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Debra C. Lening, Clerk to the Board