

ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DELTA, STATE OF COLORADO
ORDINANCE NO. 2024-02

DELTA COUNTY OPEN BURNING AND LOCAL FIRE RESTRICTION ORDINANCE

WHEREAS, the Board of County Commissioners adopted Resolution 1989-R-017 on August 14, 1989 recorded at Reception No. 442433 to prohibit the open burning of trash; and

WHEREAS, the Board of County Commissioners of Delta County (Board) adopted Ordinance No. 1996-003 on July 22, 1996 recorded at Reception No. 497555 to ban open fires when appropriate; and

WHEREAS, the Board adopted Ordinance No. 2007-02 on April 16, 2007 recorded at Reception No. 614195 to authorize the identification of "Red Flag" days and requiring notification prior to burning.

WHEREAS, the Board adopted Ordinance No. 2012-01 on June 18, 2012 recorded at Reception No. 659252 to govern the identification of "Red Flag" and/or High Wind Advisory Fire Days and Required Notification of Delta County Dispatch before initiating an Agricultural Burn; and

WHEREAS, the Board has authority, pursuant to C.R.S. § 30-15-401(1)(n.5) to ban open fires to a degree and in a manner the Board deems necessary to reduce the danger of wildfires within those portions of unincorporated Delta County where forest or grass fires are found to be high, based on competent evidence; and

WHEREAS, C.R.S. § 30-15-401(1)(n.7), authorizes the Board to prohibit the sale, use and possession of fireworks, including permissible fireworks, within those portions of unincorporated Delta County; and

WHEREAS, The Delta County Board of County Commissioners acknowledges that from time-to-time weather conditions exist in Delta County which are favorable for rapid fire growth and under such circumstances, open fires and burning threaten the health, safety and wellbeing of citizens and property in Delta County. During these high fire-danger conditions, the Board recognizes restrictions on Open Fires and use of fireworks are in the best interests of all citizens to preserve the health, safety and welfare of the citizens and protection of property; and

WHEREAS, the Board finds it to be prudent and necessary to establish a process to ban open fires, under conditions where open burning is dangerous to the health and safety of the community and the danger of forest and/or grass fires is high and to require citizens to notify the Delta County Emergency Communications Center (Dispatch) before initiating an agricultural fire and/or open burning and to provide penalties for initiating such as fire on days when restrictions are in effect, and

WHEREAS, the Delta County Sheriff (Sheriff) is authorized pursuant to sections C.R.S. § 30-10-512 and C.R.S. § 30-10-513, to act as fire warden of the County and is responsible for coordination of fire suppression efforts in case of prairie, forest or wildland fires or wildfires occurring in unincorporated areas of the County outside the boundaries of a fire protection district or when a fire exceeds the capabilities of a fire protection district to control; and

WHEREAS, the Board believes that the Sheriff, as fire warden, is the appropriate person, using their expertise and discretion along with established fire restriction evaluation guidelines and in consultation with local fire chiefs, state and federal fire suppression and land management agencies, to determine whether a restriction of open fires, open burning and use of fireworks should be implemented or elevated in times of extreme fire danger or suspended during times of decreased fire danger; and

WHEREAS, upon review of Delta County Resolution 1989-R-017, and with consultation with the Sheriff and Emergency Management, the Board deems it is in the best interest of the Citizens of Delta County to repeal Resolution 1989-R-017.

WHEREAS, upon review of Delta County Ordinances No. 1996-003, No 2007-02 and No. 2012-01, and with consultation with the Sheriff and Emergency Management, the Board deems it is in the best interests of the Citizens of Delta County to repeal and replace Delta County Ordinances No. 1996-003, No 2007-02 and No. 2012-01 with this Ordinance.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

I. TITLE

- a. This Ordinance shall be known and referred to as the “Delta County Open Burning and Local Fire Restriction Ordinance,” and may be cited and referenced as such.

II. PURPOSE

The purpose of this Ordinance is to:

- a. Preserve and protect the public health, safety and welfare of citizens in Delta County by restricting open fires, open burning, and/or the use of fireworks in the

unincorporated areas of the County when high fire dangers exist to prevent forest and grass fires; and

- b. Establish Open/Agricultural Burning definitions and allow for the implementation of restrictions on open fires and burning during severe weather conditions to include watches and warnings issued by the National Weather Service.
- c. Appoint the Sheriff and/or their designee with the authority to enact Stage I or Stage II fire restrictions as defined within this Ordinance within all or portions of unincorporated Delta County when high fire danger condition exist and rescind those restrictions when appropriate.
- d. Prohibit the open burning of trash.
- e. Define applicable penalties and fee schedule for violation of the ordinance.

III. DEFINITIONS

For the purposes of this Ordinance, the following definitions shall apply:

- a. **“Fireworks”** – As defined in C.R.S. § 24-33.5-2001(5) any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation and that meets the definition of articles pyrotechnics, permissible fireworks or display fireworks pursuant to C.R.S. § 24-33.5-2001(11).
- b. **Red Flag/High Wind Temporary Fire Ban** - A Red Flag/High Wind Temporary Fire Ban is in effect any time when the National Weather Service issues any of the following watches/advisories:
 - i. Red Flag Warning
 - ii. Wind Advisory
 - iii. High Wind Watch
 - iv. High Wind Warning
- c. **Open Fire** – As used in this Ordinance, the term “Open Fire”:
 - i. Includes: Setting fire to any grass, wood or other combustible material outside of an enclosed structure; the use of explosives or fireworks of all kinds and brands; or outdoor welding or operating an acetylene or other torch with an open flame other than in an area cleared of all flammable materials;
 - ii. Does NOT include: Emissions from fireplaces, fire pits, chimaeas or other wood burning containers that have been approved for residential, recreation, or aesthetic purposes at a residence or business; campfire outside a structure or living accommodation contained by a fireplace, pit, or permanent grate used for cooking, personal warmth, personal recreation, ceremonial or

aesthetic purposes or a campfire that uses charcoal, natural gas, propane or another fuel or fires within a residential or commercial fireplace;

- d. **Agricultural Open Burning** – Colorado defines Agricultural Open Burning as: open 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.” [Colorado Air Regulation 9]
- e. **Trash** - Any mixture or quantity of flammable and/or inflammable waste materials, including but not limited to garbage, rubbish, wastepaper, plastics, wood fabric, metal, or other materials of a manmade nature which are discarded as waste from any home, institution, or business.
- f. **Slash/Pile Burning** – Burning of vegetative material that has been concentrated by manual or mechanical methods and separated into piles.

IV. APPLICATION

- a. Pursuant to C.R.S. § 30-15-401(2)(a)(I), this Ordinance shall apply throughout unincorporated areas of Delta County including public and state lands. This ordinance shall also apply within the corporate limits of any incorporated town or city within Delta County which elects by appropriate ordinance or resolution to have the provisions of this Ordinance apply therein.

V. UNLAWFUL ACTIVITIES

- a. The following activities are unlawful at all times within unincorporated Delta County:
 - i. Engaging in any activity prohibited when Stage I, Stage II or Stage III Fire Restrictions are in effect other than exempted per the restrictions in unincorporated Delta County.
 - ii. No person shall initiate an Open Fire without first notifying the Delta County Burn Line.
 - iii. No person shall an initiate an Open Fire in unincorporated areas of Delta County on a day when the Delta County Sheriff or his designee has enacted a “Red Flag/High Wind Temporary Fire Ban.
 - iv. The open burning of any trash, rubber, plastics, tires, asphaltic shingles, insulation or similar dense or toxic smoke-producing substances by any person, firm, corporation, cooperative, or any other entity is prohibited.

VI. OPEN BURNS THAT REQUIRE A STATE PERMIT FROM CDPHE

- a. Certain Open Burning is allowed but requires a permit issued through the Colorado Department of Public Health and Environment (CDPHE) Air Pollution Control Division. These burns include, but are not limited to, Slash/Pile Burning. See Colorado Air Quality Control Commission Regulation No. 9, 5 Code Colorado Regulations § 1001-11 and <https://cdphe.colorado.gov/outdoor-burning> for further information.

VII. REQUIRED NOTICE – DELTA COUNTY BURN LINE

- a. No person in Delta County shall initiate an agricultural open burn, broadcast burn or open fire as described in this Ordinance without first notifying the Delta County Emergency Communications Center (Dispatch) at (970) 399-2955 on that same day and relaying the required information as stated on the automated recording as to the location of any fire(s) to be initiated.

VIII. DELTA COUNTY BURN LINE PROCEDURES

- a. The Delta County Sheriff's Office and/or Delta County Emergency Communications Center shall maintain the "Delta County Burn Line" which is an automated phone system accessible by citizens 24 hours a day by calling (970) 399-2955 to determine the status of any Open Burn Restrictions in Delta County.

IX. DECLARATION OR RESCISSION OF STAGE 1 OR STAGE II OPEN FIRE RESTRICTION – AUTHORITY DESIGNATED TO THE DELTA COUNTY SHERIFF

- a. The Board of County Commissioners recognizes that when weather conditions bring low relative humidity, dry fuel loads and the potential for extreme fire behavior; local, state and federal fire suppression and land management agencies meet on a regular basis to determine whether fire restrictions are warranted to prevent fires and protect the health, safety and property of citizens across the region. During these discussions there may be an urgent need to implement Stage I or Stage II Open Fire Restrictions without delay.
- b. The Board of County Commissioners declares that the Delta County Sheriff, in their capacity as fire warden; shall have the authority to declare Stage I or Stage II Open Fire Restrictions whenever the danger of forest and/or grass fires is found to be high and without further proceedings or resolution required by the Board. Any declaration of restrictions made pursuant to this section shall specify the Stage Level, parameters and duration of the restrictions as deemed necessary and appropriate.

- c. The Board of County Commissioners declares that the Delta County Sheriff, in their capacity as fire warden; shall have the authority to rescind Stage I or Stage II Open Fire Restrictions without further proceedings or resolution required by the Board.

X. FIRE RESTRICTION STAGES

The following Open Fire Restriction Stages shall be applicable in Unincorporated Delta County:

a. STAGE I FIRE RESTRICTIONS

- i. The following acts may be **PROHIBITED** when STAGE I Fire Restrictions are imposed by the Sheriff:
 - 1. Open fires including agricultural burning of fields, fence rows, ditches, piles, slash or wildland broadcast burning;
 - 2. Burning of trash or debris;
 - 3. Smoking **EXCEPT** within an enclosed vehicle or building (where legally allowed) or a developed recreation site or while stopped in an area at least three (3) feet in diameter that is barren or cleared of all flammable materials.
 - 4. The use of explosives or fireworks of any kind (as defined) pursuant to C.R.S. § 30-15-401(1)(n.7) to include the use of exploding targets or tracer ammunition.
 - 5. Use of a chainsaw or other internal combustion engine without a properly installed USDA or SAE approved spark arrestor.
- ii. The following acts may be PERMITTED when STAGE I Fire Restrictions are imposed:
 - 1. Fires within a permanent fire pit, ring or BBQ grill at a private residence, or within a developed recreational site such as a campground or picnic area that is completely void of combustible material on the ground.
 - 2. Use of a fully enclosed (shepherd type) stove with a ¼” spark arrestor type screen.
 - 3. Use of residential fire features such as chiminea, tiki torches or gas fire pits when supervised by a responsible adult.
 - 4. Use of liquid or gas fueled stoves, lanterns and heating devices with a controlled flame and a shut-off valve.
 - 5. Use of a chainsaw or other internal combustion engine with a USDA/SAE approved spark arrestor properly installed and

functioning while in possession of a chemical pressurized fire extinguisher of at least eight (8) ounces and a rounded point shovel with an overall length of at least 35 inches (35”) readily available for use.

6. Responsible target practice using non-exploding targets, non-tracer ammunition.
7. Welding if conducted in a safe manner in an area void of combustible material for ten feet (10’) in diameter and in possession of a chemical pressurized fire extinguisher with a minimum rating of 2A.
8. Professional Fireworks displays with a valid permit and fire mitigation plan.

b. STAGE II FIRE RESTRICTIONS

- i. The following acts may be PROHIBITED when STAGE II Fire Restrictions are imposed by the Sheriff:

1. Building, maintaining, attending, or using any fire, campfire or stove fire outside – recreational fires of all kinds are prohibited;
2. All open and agricultural burning to include but not limited to burning of fields, ditches, fence lines or brush;
3. The burning of trash or debris;
4. Fires in portable chimineas, charcoal BBQ grills, decorative or warming fire pits and tiki torches.
5. Smoking, outside in an area that is not void of combustible materials or the disposal of a lit cigarette butt from a moving vehicle.
6. Use of a motor vehicle off established roads, motorized trail or parking outside an established parking area in an area flammable vegetation within ten feet of the vehicle.
7. The use of explosives or fireworks of any kind (as defined) pursuant to C.R.S. § 30-15-401(1)(n.7) to include the use of exploding targets or tracer ammunition.
8. Operating a chainsaw or other equipment powered by an internal combustion engine WITHOUT a USDA or SAE approved spark arrester properly installed and in effective working order

- ii. The following acts may be PERMITTED when STAGE II Fire Restrictions are imposed:

1. Fires fueled by propane, natural gas, jellied petroleum, or pressurized liquid fuels such as lanterns, BBQ grills, stoves or backyard fire features, equipped with a shut-off valve are allowed when

- used in an area of at least three (3) feet from any flammable material such as grass or pine needles.
2. Smoking, within an enclosed vehicle or building (where legally allowed) or outside while stopped in an area at least three (3) feet in diameter that is barren or cleared of all flammable materials.
 3. Operating a chainsaw or other equipment powered by an internal combustion engine with a USDA or SAE approved spark arrester properly installed and in effective working order; while possessing a chemical pressurized fire extinguisher with a minimum rating of 2A and a round point shovel with an overall length of at least 35 inches (35") readily available for use.
 4. Welding or use of cutting torches within an area that is barren and cleared of all combustible materials of at least 30 feet in all directions from the operating equipment while possessing a fire extinguisher with a minimum rating of 2A.
 5. Use of a motor vehicle on established roads or motorized trails void of tall grass or flammable vegetation and when parked, the vehicle is in an established parking area in an area void of vegetation within ten feet of the vehicle.
 6. Professional Fireworks displays with a valid permit and fire management plan.
 7. Open fire or burning conducted by any local, state or federal officer in performance of official fire suppression functions.

XI. IMPLEMENTATION OR RESCISSION OF STAGE III FIRE RESTRICTIONS

- a. If the Sheriff, after consultation with various local, state and federal fire suppression and land management agencies, receives a recommendation that the county shall impose Stage III Fire Restrictions within Delta County; the Sheriff or their designee shall immediately inform the Board and call for a meeting of the Board. The Sheriff or their designee shall then present recommendations to the need for Stage III restrictions.
- b. When conditions indicate a reduction or the suspension of Stage III restrictions, the Sheriff or their designee shall notify the Board of the recommendations for such reduction or suspension from local, state and federal officials.
- c. The Stage III Fire Restrictions shall be implemented or rescinded by resolution of the Board.
- d. Stage III Fire Restrictions are a closure order prohibiting entry to the affected area of the restrictions for all entry except for:

- i. Persons with a written fire entry and activity permit issued by the Sheriff;
- ii. Any local, state or federal officer or member of an organized rescue, firefighting force, law enforcement or other first responder in the performance of an official duty;
- iii. Resident owners and lessees of private property within the closed area.
- iv. Other exceptions as designated by the Sheriff or Board.

XII. ENFORCEMENT

- a. This Ordinance shall be enforced by the Delta County Sheriff, or their designee.

XIII. PENALTIES FOR VIOLATION

- a. Pursuant to C.R.S. § 30-15-402(1), any person who violates any provision of this Ordinance shall be guilty of a civil infraction, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1000) for each separate violation. Each violation shall be deemed separate and distinct from any other violation and punishable as a separate offense.
- b. **VIOLATIONS**
 - 1. First Violation: Fifty dollars (\$50)
 - 2. Second Violation: Two-hundred and fifty dollars (\$250)
 - 3. Third Violation: Five hundred dollars (\$500)
 - 4. Subsequent Violations: One thousand dollars (\$1,000)
- c. The penalty assessment procedure provided in C.R.S. § 16-2-201 is authorized to be followed by any law enforcement officer for such violation(s). The notice shall be a summons and complaint, identify the alleged offender, specify the offense and applicable fine, and require that the alleged offender pay the fine or appear to answer the charge at a specified time and place.

XIV. ADDITIONAL REMEDIES

- a. 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 any other applicable statute, ordinance, rule, order or regulation including, but not limited to, prosecution under C.R.S. § 18-13-109.

XV. SEVERABILITY

- a. 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.

XVI. EMERGENCY

- a. 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 the citizens of Delta County, Colorado.

XVII. REPEAL

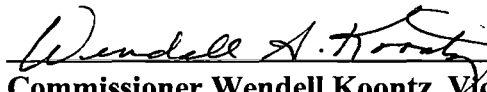
- a. Delta County **Resolution 1989-R-017** is hereby repealed, effective upon the adoption of this Ordinance, 2024-2.
- b. Delta County Ordinances No. **1996-003**, No **2007-02** and No. **2012-01** are hereby repealed in their entirety and replaced effective upon the adoption of this Ordinance, 2024-02.
- c. Any other Delta County ordinances, resolutions, rules or regulations, or parts thereof, in conflict with this Ordinance are hereby repealed.

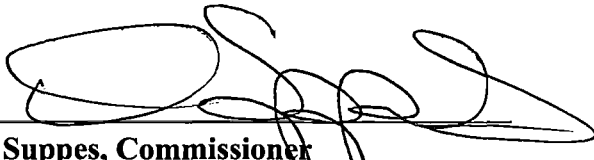
The foregoing text is the authentic text of Delta County Ordinance 2024-02. The first reading of said Ordinance took place on April 16, 2024. It was published in full in the *Delta County Independent* on April 25, 2024. This Ordinance was approved and adopted on second reading on May 7, 2024, and is effective on May 27, 2024.

ADOPTED this May 7, 2024, at Delta, Colorado


DELTA COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS


Commissioner Mike Lane, Chair


Commissioner Wendell Koontz, Vice Chair



Don Suppes, Commissioner



ATTEST
Teri Stephenson
Delta County Clerk & Recorder

