

ORDINANCE NO. 02-2

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF EL PASO, STATE OF COLORADO**

**AN ORDINANCE RESTRICTING OPEN FIRES AND OPEN BURNING
IN THE UNINCORPORATED AREAS OF EL PASO COUNTY**

WHEREAS, the Board of County Commissioners of the County of El Paso (Board), pursuant to Sections 30-11-107(l)(a) and 30-15-401, etseq. 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 El Paso County; and

WHEREAS, pursuant to Section 30-15-401(l)(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 C.R.S., provides that except for ordinances calling for special elections or necessary to the immediate preservation of the public health or safety and containing the reasons making the same necessary, such ordinances shall not take effect and be in force before thirty days after they have been so published; however, an excepted ordinance shall take effect upon adoption; and

WHEREAS, the Sheriff of El Paso County (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 or assist other governmental authorities in controlling or extinguishing forest or prairie fires; and

WHEREAS, the Sheriff has appointed a Deputy Fire Marshal to act on his behalf in matters relating to fire prevention and fire control in El Paso County; and

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

WHEREAS, the Sheriff, by and through the Deputy Fire Marshal, has advised the Board that atmospheric conditions, including lack of moisture, and other local conditions create a high danger of forest and prairie fires in El Paso County, thereby making open fires and open burning within the unincorporated areas of El Paso County hazardous; and

WHEREAS, the Sheriff, through the Deputy Fire Marshal, monitors fire weather conditions and fire danger ratings; and

WHEREAS, fire danger ratings and restrictions need to be coordinated among the various wildland fire agencies within the County and surrounding Counties; and

WHEREAS, objective criteria has been developed among cooperating counties, state and federal Forest Service and other wildland fire agencies; and

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

WHEREAS, the Colorado State Forest Service and the United States Forest Service have, at times, requested restrictions be placed on open burning in unincorporated areas of El Paso; and

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

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

Section 1. Repeal and Re-Enactment. The Board of County Commissioners hereby repeals Ordinance No. 98-1, and re-enacts said ordinance as indicated below.

Section 2. Title

This ordinance shall be known and referred to as the "El Paso County Open Fire and Open Burning Restriction Ordinance," and may be cited and referenced as such.

Section 3. Purpose

The purpose of this Ordinance is to preserve and protect the public health, safety, and welfare of the citizens of El Paso County, Colorado, by restricting open fires and open burning in the unincorporated areas of El Paso 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 El Paso County.

Section 4. Authority

This 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 section 401(l)(n.5), C.R.S.

Section 5. 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 El Paso County, Colorado, by restricting open fires and open burning in the unincorporated areas of El Paso County in order to prevent forest and prairie fires given the high danger of such fires in El Paso 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 6. Application

This Ordinance shall apply throughout the unincorporated areas of El Paso County, including public, private, state, and applicable federal lands.

Section 7. Definitions

Open fire or open burning: For purposes of this Ordinance, open fires or open burning shall be 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 operating an acetylene or other torch with open flame other than in an area cleared of all flammable materials, fireworks of all kinds or brands, and the prescribed burning of fence lines or rows, fields, farmlands, rangelands, wildlands, trash, and debris.

Fire Restriction Evaluation Guidelines: That set of evaluation criteria currently in use by local 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.

Stage I 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 9.
2. The sale or use of fireworks.
3. Outdoor 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.

Stage II Restrictions: Prohibits the following activities:

1. All open burning as defined other than those exceptions/exemptions as noted in Section 9.
2. The sale or use of fireworks.
3. Outdoor smoking except within an enclosed vehicle or building.

Section 8. Unlawful Acts

During Stage I or Stage II Restrictions, it shall be unlawful for any person to build, maintain, attend or use an open fire, conduct an open burn, conduct sales of fireworks, or engage in outdoor smoking other than as excepted, in the unincorporated areas of El Paso County including public, private, state, and applicable federal lands.

Section 9. Exceptions/Exemptions

The following shall not be in violation of Section 8:

9.1. Commercial or community fireworks displays properly permitted.

9.2 The following are exempt from this ordinance:

- Fires contained within liquid-fueled or gas-fueled stoves.
- Indoor fireplaces and wood-burning stoves.
- 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.

9.3 The burning of irrigation ditches in the designated areas is prohibited by this Order EXCEPT for ditches located within, and completely surrounded by, irrigated farmlands where such burning is necessary for crop survival. Prior to such excepted ditch burning, permission must be obtained from the Sheriff by and through the Deputy Fire Marshal.

9.4 Persons with a permit or written authorization from the Sheriff by and through the Deputy Fire Marshal specifically authorizing the otherwise prohibited act or omission.

9.5 Any federal, state, or local officer, or member of an organized rescue or firefighting force, in the performance of an official duty.

9.6 Any further exemptions to either the meaning of terms or the enforcement of this Ordinance shall be granted only by the Sheriff, through the Deputy Fire Marshal, or for exemptions upon or within state or federal lands located within El Paso County, by the administering state or federal agency, and only if the proposed action is deemed by the El Paso County Sheriff, through the Deputy Fire Marshal, to be safe and mitigable.

Section 10. Implementation of Stages

The Deputy Fire Marshal or his designee shall monitor fire danger conditions and coordinate with Federal, State and local fire agencies to determine the appropriate stage of restrictions. When the established Fire Restriction Evaluation Guidelines indicate that enforcement of this ordinance under Stage I Restrictions should be re-instated, or that restrictions should be upgraded to Stage II Restrictions, the Deputy Fire Marshall or his designee shall coordinate notification of the public through a general

press release to local television, radios and print media, as well as posting on the El Paso County Sheriff's Office Internet Website. Likewise, when conditions indicate a reduction in restrictions from Stage II to Stage I, or the suspension of enforcement, the same notification to the public shall occur.

Section 11. Enforcement Agencies/Prosecution

11.1 This Ordinance shall be enforced by the Sheriff, through his Deputies, including the Deputy Fire Marshal, or by the administering agencies of the state and federal lands located therein, 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. Any further exception to the enforcement ability of this Ordinance by the administering agency shall be granted only by the administering agency, and only if the proposed action is deemed by the Sheriff of El Paso County or the state or federal administering agency to be safe or mitigable.

11.2 Criminal prosecution may be brought against a violator in accordance with Sections 30-15-402 C.R.S., 30-15-402(l) as amended by H.B. 96-1117, and 30-15-410, 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 16-2-201 C.R.S.

11.3 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.

11.4 Any person who violates this Ordinance from the effective date commits a Class 2 Petty Offense under Section 30-15-402(l) C.R.S. as amended by H.B. 96-1117, and, upon conviction or confession of guilt thereof, shall be punished by a fine of not more than six hundred dollars (\$600.00) during Stage I Restrictions, or one thousand dollars (\$1,000.00) during Stage II Restrictions, for each separate violation, plus a surcharge of ten dollars (\$10.00), under Section 30-15-402(2) C.R.S. Fines are to be set by the County Court, unless the violator wishes to confess guilt and, pursuant to the penalty assessment procedure, pay a fine in the amount of one hundred dollars (\$100.00) during Stage I Restrictions, or five hundred dollars (\$500.00) during Stage II Restrictions, plus the ten dollar (\$10.00) surcharge.

11.5 All fines paid for the violation of this Ordinance shall be in negotiable funds made payable to El Paso County and submitted to the El Paso County Treasurer's Office, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903. All fines for the violation of this Ordinance received by the County shall be remitted to the El Paso County Treasurer and deposited into the general fund of El Paso County. All surcharges collected shall be paid to the Clerk of the Court and subsequently credited to the Victims and Witnesses Assistance and Law Enforcement Fund of the Fourth Judicial District of the State of Colorado pursuant to Section 30-15-402(2) C.R.S.

Section 12. 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 13. Safety Clause

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 El Paso County, Colorado.

Section 14. Effective date

This Ordinance placing a restriction on all open fires and open burning within the unincorporated areas of El Paso County shall be effective immediately, and remain in effect until this Ordinance is amended by the Board, or enforcement is suspended at the direction of the Sheriff or his designee. Likewise, the Sheriff or his designee may also direct to reinstate enforcement of this Ordinance at any time after such enforcement has been suspended. Upon reinstating enforcement of this Ordinance, the Sheriff or his designee shall specify the stage of restrictions in effect. The Board further orders that this Ordinance be published in full in the El Paso County Advertiser and News.

Section 15. 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.

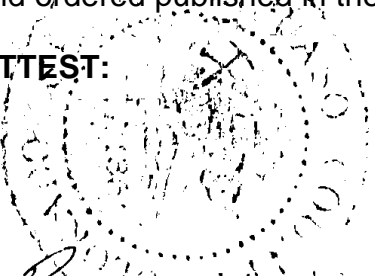
Section 16. Repeal of Conflicting Provisions

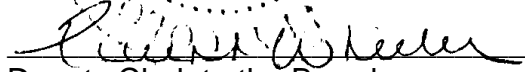
All former County ordinances, resolutions, rules or regulations, or parts thereof, in conflict with this Ordinance are hereby repealed.

FIRST READING:

INTRODUCED, READ, AND ADOPTED ON FIRST READING on June 27, 2002,
and ordered published in the El Paso County Advertiser and News.

ATTEST:




Deputy Clerk to the Board
El Paso County

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF EL PASO, COLORADO**

By: 
T.D. Huffman, Chair