

ORDINANCE NO. 21-001

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

**“EL PASO COUNTY OPEN FIRE AND OPEN BURNING RESTRICTION
ORDINANCE”**

PLEASE NOTE: First Reading of Ordinance No. 21-001 was held on _____, 2021, Ordinance No. 21-001 was published in the El Paso County web site on _____, 2021 and this Ordinance No. 21-001 will become effective immediately upon publication of the Title.

ORDINANCE NO. 21-001

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

**AN ORDINANCE FOR THE REGULATION OF 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 C.R.S. §§ 30-11-107(1)(a) and 30-15-401, *et seq.* 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 C.R.S. § 30-15-401(1)(n.5), the Board has specific authority to adopt an ordinance establishing an open burning permit system for the purpose of authorizing and regulating open burning as one of many methods of safely disposing of slash and 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 dangers of forest or grass fires is found to be high; and

WHEREAS, in the event a slash pile burn implicates County land use and zoning laws, permit applicants and grantees shall be subject to the El Paso County Land Development Code; and

WHEREAS, the Board does not waive its authority to make determinations based on competent evidence, under Colorado Statute or this ordinance, by way of delegations contained herein; and

WHEREAS, the Board will review this ordinance at least once annually, at a regularly scheduled Board meeting, to determine whether authority delegated hereunder is being appropriately administered; and

WHEREAS, the Board encourages special districts having fire jurisdiction to provide education to citizens about the use of fire as a tool; and

WHEREAS C.R.S. § 30-15-405, provides that except for ordinances calling for special elections as necessary for 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 C.R.S. §§ 30-10-512 and 30-10-513, 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 Warden 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, pursuant to C.R.S. § 32-1-1002(3)(a), *et seq.*, the Chief of each Fire Protection District has authority over the supervision of all fires within his district; and

WHEREAS, the Colorado Division of Fire Prevention and Control has established Slash Pile Burning guidelines; 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 restrictions 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. Incorporation

The foregoing findings are incorporated herein.

Section 2. Repeal and Re-Enactment

The Board of County Commissioners hereby repeals Ordinance 19001, and enacts the following ordinance.

Section 3. 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 4. 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 during times of high fire danger and to provide a permitting system that will (1) allow and regulate open and safe burning of slash; (2) inform persons of considerations for the appropriate, safe, and effective use of fire as a tool; and (3) reinforce knowledge of local requirements of homeowner associations, special districts having fire jurisdiction, and county ordinances to increase public awareness and protect the public health, safety, and welfare.

Section 5. Authority

This Ordinance is authorized by, *inter alia*, generally, C.R.S. 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 § 401(1)(n.5).

Section 6. 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 unincorporated El Paso County and by establishing an open burn permit system in coordination with the Sheriff’s Office, El Paso County Public Health, and special districts having fire jurisdiction to allow oversight of open burning in order to prevent forest and prairie fires in El Paso County. Section headings and any cross references shall not be deemed to govern, limit, modify or affect in any manner the scope, meaning or extent of any provision of this Ordinance.

Section 7. Application

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

Section 8. Definitions

For the purposes of this Ordinance, the following shall mean:

“Air Curtain Destructor (also known as Air Curtain Burners or Air Curtain Incinerators)”: An open burning device that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Devices of this type may be constructed above or below ground and with or without refractory walls and floor. (Air Curtain devices are not conventional combustion devices with the enclosed fireboxes and controlled air technology such as mass burn, modular and fluidized bed combustors.)

“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 and other agricultural cultivation purposes.

“Bonfire”: A bonfire is an outdoor fire greater than 3 feet in diameter and 2 feet in height.

“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.

“Extinguished”: No excessive heat or visible flame, smoke, or emissions exist.

“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.

“Fire Restrictions and Stages”:

- **“Stage I Restrictions”**: Prohibits the following activities:
 1. Open fire and open burning as defined other than those exceptions/exemptions as noted in Section 10 below.
 1. The sale or use of fireworks.
 2. 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 of and cleared of all flammable materials.

- **“Stage II Restrictions”**: Prohibits the following activities:
 2. All open fire and open burning as defined other than those exceptions/exemptions as noted in Section 10 below.
 3. The sale or use of fireworks.
 4. Outdoor smoking except within an enclosed vehicle or building.

“Fire Weather Zone”: There are 3 fire weather zones within El Paso County that 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 221, western El Paso County consisting of the Rampart Range and the mountainous region west of Colorado Springs and Highway 115; Fire Weather Zone 226, northern El Paso county east of the Rampart Range and generally north of Highway 94; and Fire Weather Zone 227, southern El Paso County generally east of Highway 115 and south of Highway 94.

“Open Burning”: Vegetation management that involves the combustion of one or more piles of clean, dry natural vegetative material on an open premise, or on any public street, alley or other land adjacent to such premises.

“Open Fire”: For purposes of this Ordinance, open fires shall be defined as outdoor fire, including, but not limited to, Vegetation Management Burning, 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 combustible materials, fireworks of all kinds or brands, and the prescribed burning of fence lines or rows, fields, farmlands, rangelands, wild lands, trash, and debris.

“Person”: Any individual, association, organization, partnership, firm, corporation, business or other entity recognized by law.

“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, in accordance with the Colorado Prescribed Fire Planning and Implementation Policy Guide, issued by the Colorado Division of Fire Prevention and Control.

“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.

“Slash”: Woody material “less than four (4) 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.

“Vegetation Management Burning”: Fire that a person starts and that is intentionally used for grassland or forest management, including vegetative, habitat, or fuel management, and yard waste burning consisting of clean dry vegetative material. Vegetation Management Burning includes air curtain destructor and slash pile burning. Vegetation Management Burning does not include:

1. Burning in the course of agricultural operations.
2. Burning for the purpose of maintaining water conveyance structures.
3. Smokeless flares or safety flares for the combustion of waste gases.
4. Flares used to indicate danger.
5. Emissions from fires in fireplaces, fire pits, chimineas or other wood burning containers that have been approved and used for non-commercial, recreational or aesthetic purposes using clean, dry, untreated wood or charcoal.
6. Cooking fires that are smaller than three feet in diameter and less than two feet high that are kindled for the purpose of cooking food using only clean, dry untreated wood or charcoal, which are contained by fireplaces, fire pits (free standing and/or above ground), barbecues or other systems approved by the local special district having fire jurisdiction or the El Paso County Sheriff’s Office.
7. Broadcast burns conducted within federal and state guidelines that have a written prescribed fire plan.
8. The use of explosives.
9. Outdoor welding or operating an acetylene torch with open flame.
10. The use of fireworks of all kinds or brands.

Section 9. Unlawful Acts

1. No person shall conduct Vegetation Management Burning within the unincorporated areas of El Paso County, including private and County property, without first having obtained an Open Burning Air Quality Permit from El Paso County Public Health, an Open Burning Permit from the El Paso County Sheriff's Office, and adhering to the terms of the permit and the requirements established in Section 13.
2. No person shall conduct open burning of items that are prohibited in Vegetation Management Burning at any time in the unincorporated areas of El Paso County including private and County property.
3. Engaging in any activity prohibited when Stage I or Stage II Restrictions are in effect, other than as excepted or exempted, in the unincorporated areas of El Paso County including public, private, state, and applicable federal lands.
4. No open burning when a Red Flag Warning is in effect. No person shall initiate or continue an open fire in unincorporated areas of El Paso County on a day identified by the National Weather Service as a "red flag warning" period in any part of unincorporated areas of El Paso County which are located outside of a fire protection district boundary; any existing burn projects must be extinguished under "red flag warning" restrictions. Stage 2 Restrictions shall be in place during red flag warning periods and open fire or burning during a red flag warning period shall be treated as a violation of Stage 2 burn restrictions

Section 10. Exceptions/Exemptions

The following are permitted and are not in violation of Section 9:

1. Commercial or community fireworks displays properly permitted.
2. During Stage 1 restrictions
 - a) Fires and campfires within permanently constructed fire grates in developed campgrounds and picnic grounds, or private residences in areas cleared at least 3' of all flammable materials. (Rock fire rings are considered temporary)
 - b) Charcoal grills, pellet stoves, chimineas or other fixed fireplaces and appliances that are fueled with clean solid materials such as clean wood or pellets.
 - c) Fires in developed campgrounds and picnic grounds, or private residences contained within liquid-fueled or gas-fueled stoves, fire pits or appliances; liquid propane (LPG), or natural gas; cleared at least 3 feet of all flammable materials, with flames lengths not exceeding 2 feet.
 - d) Fireplaces or wood burning stoves located within a building.
 - e) Fires for which a permit has been obtained by the local fire protection district.
3. During Stage II Restrictions
 - a) Fireplaces or wood burning stoves Located within a building.

- b) Fires in developed campgrounds and picnic grounds, or private residences contained within liquid-fueled or gas-fueled stoves, fire pits or appliances; liquid propane (LPG), or natural gas; cleared at least 3 feet of all flammable materials, with flames lengths not exceeding 2 feet. Where the flame is completely extinguished by activation of a switch, valve, and/or tip over safety switch.

4. 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 Warden

5. Persons with a permit or written authorization from the Sheriff, by and through the, Deputy Fire Warden specifically authorizing the otherwise prohibited act or omission. Issuance of such permit or written authorization shall be contingent upon concurrence of any special district having fire jurisdiction.

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

7. Any further exemptions to either the meaning of terms or the enforcement of this Ordinance shall be granted only by the Sheriff, by and through the Deputy Fire Warden, 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 Warden to be safe and manageable with the concurrence of any special district having fire jurisdiction.

8. During Stage II Restrictions, in unincorporated areas of El Paso County, 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 works along with a fire watch is established and has ready access to a fire extinguisher or water supply suitable to suppress any fire that results from the welding operation. In areas within a fire protection district will fall under the rules of the special district having jurisdiction.

Section 11. Implementation of Fire Restriction Stages

The Deputy Fire Warden 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 contained in the El Paso County Wildland Fire Annual Operating Plan indicate that enforcement of Section 9, Subsection 3, of this ordinance under Stage I Restrictions should be re-instated, or that restrictions should be upgraded to Stage II Restrictions, the Deputy Fire Warden or his designee shall coordinate notification of the public through a general press release to local television, radio and print media, as well as posting on the El Paso County Sheriff's Office Internet Website and through social media outlets. Likewise, when conditions indicate a reduction in restrictions from Stage II to Stage I, or the suspension of enforcement of Section 9, Subsection 3, the same notification to the public shall occur.

Section 12. Permit Application Process

1. Open Burning Permits will only be issued for those fires defined as Vegetation Management Burning.
2. Prior to applying for an Open Burning Permit, persons must obtain an Open Burning Air Quality Permit from El Paso County Public Health pursuant to C.R.S. § 25-7-101 *et seq.*
3. If an Open Burning Air Quality Permit is obtained from El Paso County Public Health, a request for an Open Burning Permit will automatically be sent to the El Paso County Sheriff's Office. The Sheriff's Office may approve Open Burning Permits upon finding compliance with this Ordinance and the concurrence of any special district having fire jurisdiction, within whose boundaries the burn is to take place. A notice stating whether the Open Burning Permit has been approved or denied will be sent to the applicant electronically or by first class mail.
4. An Open Burning Permit may be revoked at any time if any permit requirements are not complied with. Open Burn Permits are invalid during Stage I or Stage II Fire Restrictions or during a Red Flag Warning and any fire already ignited under such permit must be extinguished.

Section 13. Vegetation Management Burning requirements

1. Persons with an Open Burning Permit shall notify responsible fire agencies, including the Sheriff's Office and any special district having fire jurisdiction on the day of and within one hour before commencing burning. Persons shall also notify responsible fire agencies upon completion of the Open Burn. Responsible fire agencies shall be notified via Sheriff's Office Fire Dispatch at 719-390-5555.
2. If an Open Burn is to be conducted by someone other than the legal owner of the property, written permission for the Open Burn shall be obtained from the legal owner or his/her agent and submitted as part of the permit application.
3. Piles may be up to 8 feet wide x 8 feet long x 8 feet high with materials no greater than four inches in diameter and shall be compliant with any criteria established by a special district having fire jurisdiction and /or the State of Colorado Division of Fire Prevention and Control.
4. Open Burn fires shall be constantly and directly attended and observed by a competent person. Appropriate extinguishing equipment shall be available and ready for immediate use. The Open Burn Permit shall be in possession of the person attending and observing the Open Burn at all times during the Open Burn.
5. The Open Burn shall be conducted 50 feet or more from any structures or combustible fence.
6. All fires shall be conducted within the terms of the Open Burning Permit. This does not apply to recreational fires, including bonfires, camp fires, and fires used for cooking.

7. Local special districts having fire jurisdiction may have codes, regulations, policies or standards that are more restrictive or prohibit certain activities. In those cases, the more restrictive or prohibitive provisions apply.

8. Open Burns of Slash piles are allowed only when there are predicted or actual winds of 10 mph or less. All Open Burns of Slash piles conducted above 7000 feet elevation are required to have three or more inches of snow on the ground around the Slash, unless an Air Curtain Destructor is used.

9. There shall be no Vegetation Management Burning while a red flag warning is in effect in the fire weather zone of the designated burn or during Stage I or Stage II Restrictions.

10. Persons conducting Open Burning shall make reasonable efforts to notify owners and occupants of neighboring properties prior to ignition. If dispatch is notified, they will log the information on the call screen with the address and duration if possible, for agency reference.

Section 14. Enforcement Agencies/Prosecution

1. This Ordinance shall be enforced by the Sheriff, through his Deputies, or by the special districts having fire jurisdiction or 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 manageable.

2. Criminal prosecution may be brought against a violator in accordance with C.R.S. §§ 30-15-402, 30-15-402(1) as amended by H.B. 96-1117, and 30-15-410, and under the penalty assessment procedure provided in C.R.S. § 16-2-201. The Sheriff's Office is authorized to devise a ticketing system in conformance with C.R.S. § 16-2-201.

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.

4. Any person who violates this Ordinance from the effective date commits a Class 2 Petty Offense under C.R.S. § 30-15-402, and, upon conviction or confession of guilt thereof, shall be punished by a fine of not more than six hundred dollars (\$600.00), or during Stage II Open Burning Restrictions by a fine of not more than one thousand dollars (\$1,000.00), for each separate violation, plus a surcharge of ten dollars (\$10.00). 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), or During Stage II Open Burning Restrictions by a fine of five hundred dollars (\$500.00), plus the ten dollar (\$10.00) surcharge.

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, 1675

Garden of the Gods Road, Suite 2100, Colorado Springs, CO 80907 within twenty (20) days of receipt of a notice of violation. 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 C.R.S. §30-15-402(2).

Section 15. 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 C.R.S. §§18-4-105, 18-13-109.5, or any applicable local, state or federal statute, ordinance, rule, order, or regulation.

Section 16. Safety Clause

The Board 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 17. Effective date

This Ordinance placing a restriction on all open fires and open burning and establishing an open burning permit process for Vegetation Management Burning within the unincorporated areas of El Paso County shall be effective immediately, and remain in effect until this Ordinance is amended or rescinded by the Board. The Board further orders that this Ordinance be published in full in the El Paso County Advertiser and News.

Section 18. 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 19. 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 _____
2021 and ordered published in the El Paso County Advertiser and News.

ATTEST: THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF EL PASO, COLORADO

County Clerk and Recorder By: _____
Stan VanderWerf, Chair

SECOND READING:

ADOPTED ON SECOND AND FINAL READING on _____, 2019.

ATTEST: THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF EL PASO, COLORADO

County Clerk and Recorder By: _____
Stan VanderWerf, Chair

