

**ORDINANCE NO CONEJOS COUNTY 2020-1 OF THE BOARD OF CONEJOS
COUNTY COMMISSIONERS OF CONEJOS COUNTY RE: ORDINANCE
RESTRICTING OPEN FIRES AND OPEN BURNING IN THE UNINCORPORATED
AREAS OF CONEJOS COUNTY, COLORADO.**

WHEREAS, pursuant to C.R.S. §30-11-107 et seq., and §30-15-401 et seq., the Board of County Commissioners of Conejos County, Colorado (hereinafter the "Board"), has the general enabling power to adopt Ordinances for the control or licensing of those matters of purely local concern, and to do all acts and make all regulations which may be necessary or expedient for the promotion of the health, safety and welfare of the present and future residents of Conejos County; and

WHEREAS, pursuant to C.R.S. § 30-15-401(1)(n5), 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, C.R.S. § 30-15-405 provides that except for Ordinances calling for special elections or 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. As an excepted Ordinance, a second reading and subsequent publication by reference to title only are not required; and

WHEREAS, the Sheriff of Conejos 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 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 fire in Conejos County; and

WHEREAS, the Sheriff 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 Conejos County, thereby making open fires and open burning within the unincorporated areas of Conejos County hazardous; and

WHEREAS, the Sheriff monitors 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, upon the advice of the Sheriff, finds that for those days on which the National Weather Service notifies Conejos County Sheriff's Office Communication Center of a "red flag warning" (a term used by fire-weather forecasters to call attention to limited weather conditions of open burning) within those sections of unincorporated Conejos County that are subject to the "red flag warning," shall be prohibited and persons or entities shall be prohibited from open burning and subject to Stage 1 Restrictions regardless of any burn permit that may have been issued by a fire district or CDPHE within unincorporated Conejos County; and

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

WHEREAS, the County has not previously adopted an Ordinance regarding fire restriction in the unincorporated Conejos County; and

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CONEJOS COUNTY AS FOLLOWS:

SECTION 1: TITLE

This Ordinance shall be known and referred to as the "Conejos 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 Conejos County, Colorado, by restricting open fires and open burning in the unincorporated areas of Conejos 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 Conejos County.

SECTION 3: AUTHORITY

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

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 Conejos County, Colorado, by restricting open fires and open burning in the unincorporated areas of Conejos County in order to prevent forest and prairie fires given the high danger of such fires in Conejos County. Section heading 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 Conejos County, including public, private, state, and federal lands and to any incorporated town or city which elects by Ordinance to have the provisions thereof apply.

SECTION 6: DEFINITIONS

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.

Fireworks: As defined in C.R.S. § 12-28-101(3)(a), 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 open 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 brands, burn barrels without screens, and the prescribed burning of irrigation or drainage ditches, fence lines or rows, fields, farmlands, rangelands, wild lands, trash and debris.

Red Flag Warning: a term used by fire-weather forecasters including, but not limited to, the National Weather Service ("NWS") to call attention to limited weather conditions of particular importance that may result in extreme burning conditions.

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 10;
2. The sale or use of fireworks (as defined in Section 6) pursuant to C.R.S. § 30-15-401(1);
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 2 Restrictions—Prohibits the following activities:

1. All open burning as defined other than those exceptions/exemptions in Section 10.
2. The sale or use of fireworks (as defined in Section 6) pursuant to C.R.S. § 30-15-401(1)(n.7).
3. Outdoor smoking except within an enclosed vehicle or building.

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 5335(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: DECLARATION OF AN OPEN FIRE BAN:

The Conejos County Board of County Commissioners or the Conejos County Sheriff, or his 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 Ordinance. 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 press release to local television, radios and print media, Conejos County website, and social media. 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 8: NO OPEN FIRE OR OPEN BURNING WHEN RED FLAG WARNING IS IN EFFECT:

No person or entity shall initiate or continue an open fire in unincorporated areas of Conejos County on a day in which the National Weather Service has issued a "red flag warning" for any part of unincorporated areas of Conejos County. Any existing burn projects must be extinguished when a "red flag warning" has been issued. For the purposes of this Ordinance, when the National Weather Service issues a red flag

warning, Stage 1 Restrictions shall be in effect and open fire or burning during a red flag warning period shall be treated as a violation of Stage 1 burn restrictions as set forth in this Ordinance. A declaration pursuant to Section 7 of this Ordinance shall not be necessary.

SECTION 9: 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 areas of Conejos County in violation of this Ordinance, including public, private, state, and federal lands and to any incorporated town or city which elects by Ordinance to have the provisions of this Ordinance apply.

SECTION 10: EXCEPTIONS/EXEMPTIONS:

The following activities shall be exempt from this Ordinance:

- (1) Commercial or community fireworks displays properly permitted by the Sheriff or other appropriate authority.
- (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) Burn barrels providing they are at private residences and in an area cleared of all flammable materials including dry vegetation and covered with a screen. During Stage 2 restrictions, burn barrels are prohibited from use.
- (6) Persons with a permit specifically authorizing the otherwise prohibited act or omission.
- (7) Any federal, state or local law enforcement officer or member of an organized rescue or firefighting agency in the performance of an official duty.

- (8) 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 Conejos County, by the administering state or federal agency, and only if the proposed action is deemed by the Conejos County Sheriff, or the Sheriff's designee, to be safe.

SECTION 11: ENFORCEMENT:

This Ordinance shall be enforced by the Sheriff, through his Deputies in conjunction with fire code officials and upon receipt of a statement of probable cause, the Fire Chief of any fire protection district or his designee, the administering agencies of the state and federal lands located therein, or Fire Chief or his designee, of any incorporated city or town who adopts this Ordinance, and any peace officer in and for the State of Colorado as described in C.R.S. § 162.5-101, 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 if necessary.

SECTION 12: 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 C.R.S. § 30-15-402(1) 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 a surcharge of ten dollars (\$10.00), under C.R.S. § 30-15-402(2). Fines are to be set by the County Court, unless the violator wished to confess guilt and pursuant to the penalty assessment procedure within twenty (20) days of issuance of the ticket, pay the fine indicated plus the ten-dollar (\$10.00) surcharge.

- (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 accordance with C.R.S. §§ 30-15-402 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.

(4) The penalty assessment procedure provided in C.R.S. § 16-2-201 may be followed by any arresting law enforcement officer that is provided with a statement of probable cause from a fire code official 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 a surcharge of ten dollars (\$10.00).
- (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 13. DISPOSITION OF FINES:

All fines paid for the violation of this Ordinance shall be in negotiable funds made payable to Conejos County and submitted to the Conejos County Treasurer's Office, 6683 County Road 13 (P.O. Box 97) Conejos, CO 81129. All fines for the violation of this Ordinance received by the County shall be remitted to the Conejos County Treasurer and deposited into the general fund. 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 Twelfth Judicial District of the State of Colorado pursuant to C.L.S. § 30-15-402(2)(a). The defendant shall also pay court costs.

SECTION 14: 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. § 18-13-109, or any applicable local, state, or federal statute, Ordinance, rule, order, or regulation.

SECTION 15: 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 Conejos County, Colorado. This is an excepted Ordinance.

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, rules, or regulations, or parts thereof, in conflict with this Ordinance are hereby repealed.

SECTION 18: PUBLICATION/EFFECTIVE DATE:

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

This Ordinance shall be effective immediately upon adoption as an excepted Ordinance and shall remain in effect until such time as this Ordinance is amended by the Board, or enforcement is temporarily suspended by the Board.

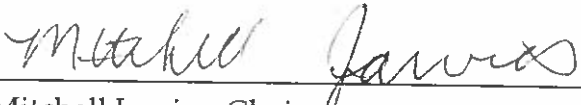
A second publication of the ordinance after adoption shall be by title only.

SECTION 19: REPEAL OF CONFLICTING PROVISIONS:

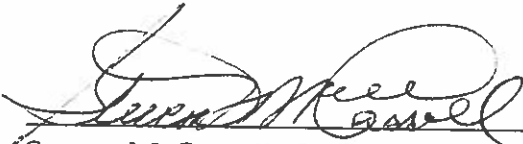
All former County ordinances, resolutions, rules or regulations, or parts thereof, in conflict with this Ordinance are hereby repealed.

INTRODUCED, AND READ on April 16, 2020, and ordered published in the Valley Courier.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CONEJOS, COLORADO



Mitchell Jarvies, Chair




Steven McCarroll, Commissioner



Carlos Garcia, Commissioner

ATTEST:



Nathan Ruybal, Conejos County Clerk & Recorder

