

Ordinance #2023- 1

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

The Board of County Commissioners of Prowers County, Colorado, pursuant to Section 30-11-107, *et seq.*, and Section 30-15-401, *et seq.*, C.R.S., has the general power to adopt ordinances, resolutions, rules and other regulations as may be necessary for the control or licensing of those matters of local concern, and to do all acts which may be necessary or expedient to promote the health, safety and welfare of the citizens of Prowers County, Colorado; and

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 danger of wildfires within those portions of the unincorporated areas of Prowers County where danger of forest or grass fires is found to be high based on competent evidence; and

Pursuant to Section 30-15-401 (1) (n.7), C.R.S., the Board has specific authority to prohibit or restrict the sale, use and possession of fireworks; and

Section 30-15-405, 406 and 407, C.R.S., provides the process for the Board of County Commissioners to utilize when adopting an ordinance; and

The Sheriff of Prowers 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 Prowers County in case of grass or forest fires, and to assume charge thereof and to assist other governmental authorities in controlling or extinguishing forest or grass fires; and

Open fires and open burning can be a prime cause of forest and grass fires in Prowers County; and

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

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

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

The Board finds that competent evidence has been presented indicating that the danger of forest and grass fires in Prowers County is periodically high, and therefore it is necessary for the preservation of the public health, safety and welfare of the citizens of Prowers County to impose

a restriction on all open fires, open burning and fireworks within the unincorporated areas of Prowers County.

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

SECTION 1: TITLE

This Ordinance shall be known and referred to as **“AN ORDINANCE RESTRICTING OPEN FIRES, OPEN BURNING AND FIREWORKS IN THE UNINCORPORATED AREAS OF PROWERS COUNTY, COLORADO”** 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 Prowers County, Colorado, by restricting open fires, open burning and fireworks in the unincorporated areas of Prowers County in order to prevent forest and grass fires given the high danger of such fires as a result of atmospheric conditions, including lack of moisture and other local conditions in Prowers County.

SECTION 3: AUTHORITY

This Ordinance is authorized by various Colorado Statutes, including Part 1 of Article 11 of Title 30, and Part 4 of Article 15 of Title 30, and specifically Section 30-15-401(1)(n.5) and (n.7), C.R.S.

SECTION 4: INTERPRETATION

This Ordinance shall be interpreted and construed to effectuate its general purpose to preserve and protect the public health, safety and welfare of the citizens of Prowers County, Colorado, by restricting open fires, open burning and fireworks in the unincorporated areas of Prowers County in order to prevent forest and prairie fires given the high danger of such fires in Prowers 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 Prowers County, including public, private, state and federal lands, and to any town or city which elects by ordinance or resolution to have the provisions thereof apply. **This Ordinance shall not replace state or federal law that regulates certain types of burning, such as tires and construction materials.**

## SECTION 6: DEFINITIONS

Fire Restriction Evaluation Guidelines: That set of competent evidence 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)) C.R.S., or display fireworks.

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

Open burning: For purposes of this Ordinance, open burning shall be defined as fire that a person starts and that is intentionally used for forest management.

### Stage 1 Restrictions – Prohibits the following activities:

- (1) Open fires and 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 set forth in Section 8 herein.
- (2) The sale, use and possession of fireworks pursuant to Section 30-15-401 (1) (n.7), C.R.S.
- (3) Outdoor smoking except within an enclosed vehicle or building, a developed recreation site or while in an area of at least three feet in diameter that is barren or cleared of all flammable materials.

### Stage 2 Restrictions – Prohibits the following activities:

- (1) Open fires and open burning, other than those exceptions/exemptions as noted in Section 8 below.
- (2) The sale or use of fireworks pursuant to Section 30-15-401 (1) (n.7), C.R.S.

- (3) Outdoor smoking except within an enclosed vehicle or building, a developed recreation site or while in an area of at least three feet in diameter that is barren or cleared of all flammable materials.
- (4) Operating or using any internal combustion engine 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, conduct, attend or use an open fire or open burning, or to sell, use or possess fireworks, or to violate any restrictions set forth herein in the unincorporated area of Prowers County, including public, private, state and federal lands and in any incorporated town or city which elects by ordinance or resolution to have the provisions herein 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 or grills.
- (3) Indoor fireplaces and wood-burning stoves.
- (4) Outdoor charcoal grills and wood-burning stoves during Stage 1 Restrictions providing they are at a private residence or commercial area and in an area cleared of all flammable materials including dry vegetation.
- (5) Agricultural burning, with the recommendation that notice of burning be given to the Prowers County Dispatch before and after the open burning, and a permit approved by the Rural Fire Chief.
- (6) Persons with a permit specifically authorizing the otherwise prohibited act or omission.

- (7) Any federal, state or local law enforcement officer or member or 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 in writing only by the Sheriff or the Sheriff's designee or for exemptions upon or within state or federal lands located within Prowers County, by the administering state or federal agency, and only if the proposed action is deemed by the Prowers County Sheriff or the Sheriff's designee, to be safe and mitigable.
- (9) Burning of trash in barrels, receptacles or other containers, if fitted with a top screen to contain embers.
- (10) All fires described in this Section 8 must be personally supervised and not left unattended.
- (11) The sale, use and possession of fireworks, including permissible fireworks, between May 31 and July 5 of any year, unless there is an express finding of high fire danger based on competent evidence.

#### SECTION 9: DECLARATION OF AN OPEN FIRE BAN, OPEN BURNING BAN, AND/OR FIREWORKS BAN

The Prowers County Board of County Commissioners or the Prowers County Sheriff shall have the authority to declare an open fire, open burning and/or fireworks 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 press release to local radios and print media and shall be promptly posted on the Prowers County website. 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 said Sheriff's 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

Any person who violates this Ordinance commits a civil infraction and shall be punished by a fine of five hundred dollars (\$500.00) for the first offense, seven hundred and fifty dollars

(\$750.00) for the second offense and one thousand dollars (\$1,000.00) for the third and subsequent offense(s). The penalty assessment procedures set out in § 16-2.3-101, C.R.S. may be followed in enforcing this Ordinance. In addition to the penalties prescribed above, persons convicted of a violation of this Ordinance shall be subject to a surcharge of ten dollars (\$10.00) that shall be paid to the clerk of the court by the defendant as provided by § 30-15-402(2)(a), C.R.S.

#### SECTION 12: DISPOSITION OF FINES

All fines paid for the violation of this Ordinance shall be in negotiable funds made payable to Prowers County and submitted to the Prowers County Treasurer's Office. All fines for the violation of this Ordinance received by the County shall be remitted to the Prowers 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 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: PUBLICATION

The foregoing text is the authentic text of Ordinance No. 2022-3. The first reading of said Ordinance took place on November 10, 2022 at a regular meeting of the Board of County Commissioners. It was published in full in the Lamar Ledger on December 15, 2022. The second reading of this Ordinance took place on January 10, 2023 at a regular meeting of the Board of County Commissioners and was adopted on such date.

#### SECTION 15: EFFECTIVE DATE AND SAFETY CLAUSE

The Board hereby finds, determines and declares that this Ordinance is necessary for the health, welfare and safety of the citizens of Prowers County, Colorado and, as an "emergency ordinance" shall take effect immediately upon the date of Adoption 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 the Sheriff's 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, including Ordinance No. 2006-01.

ADOPTED this 10<sup>th</sup> day of January, 2023, by the Board of County Commissioners of Prowers County, Colorado.

  
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Ron Cook, Chairman

  
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Wendy Buxton-Andrade, Vice-Chairman

  
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Thomas Grasmick, Commissioner

ATTEST:

  
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Jana Coen, County Clerk