

## **OPEN BURNING ORDINANCE**

**ADOPTION OF ORDINANCE:** Moved by Walters, seconded by Marx for the Second Reading and adoption of Revision of Ordinance of #03-01 in reference to reporting of controlled burning requirements. Motion carried. Revised Ordinance #03-01 as follows:

WHEREAS, It is a lawful purpose of the board of County Commissioners of the County of Day, to enact ordinances to protect and promote the general welfare, health, and safety of its citizens; and

WHEREAS, pursuant to SDCL7-8-33 the Board of County Commissioners of the County Day may, by ordinance, allow for the declaration and abatement of public nuisances within the County outside the corporate limit of any municipality; and

WHEREAS, from time to time weather and other conditions may exist which make the open burning of any substance unduly hazardous and a danger to public safety;

NOW, THEREFORE BE IT ORDAINED by Day County:

### **SECTION 1. DEFINITIONS:**

**OPEN BURNING:** The intentional burning of any substance, whether natural or manmade, or the intentional casting off of any burning substance, whether natural or manmade, except the burning of such substance in a container sufficient so as to prohibit the escape of any of the burning substance, or any sparks, flames, or hot ashes from the container. The escape of any of such burning substance, or the escape of any sparks, flames, or hot ashes from any such container shall be deemed prima facie evidence that the container was insufficient so as to meet the exception from the definition of an open burning set forth herein. The maintaining of a fire in any interior fireplace, stove, or furnace is specifically excluded from the definition of an open burning as contemplated by this ordinance.

**PERSON:** Any individual, partnership, firm, association, municipality, public or private corporation, state, tribe, nation, political subdivision, trust, estate, or any other legal entity, including any officer or governing or managing body thereof.

**PRIOR WRITTEN PERMIT:** A written permit specifically authorizing the open burning obtained from the local Fire Chief having authority for such area which permit must also be approved by the Day County Sheriff. Such permit shall be on a form approved by the Day County Board of Commissioners.

### **SECTION 2. AUTHORITY TO DECLARE FIRE DANGER EMERGENCY.**

A. When weather or other conditions shall exist which may make the open burning of any substance unduly hazardous and a danger to public safety, the Day County Board of Commissioners may by resolution declare a "fire danger emergency".

B. If a "fire danger emergency" be declared, all open burning of any substance without a prior written permit shall be prohibited within any or all of the unincorporated areas of Day County until such time as the resolution declaring the "fire danger emergency" shall have been rescinded by appropriate action of the Day County Board of Commissioners; and

C. Any person who shall create, commit, maintain, or permit to be created, committed, or maintained, an open burning without a prior written permit in violation of a resolution declaring a "fire danger emergency" shall be deemed to have committed the offense of Unlawful Burning in violation of the Ordinance, and subject to all criminal and civil penalties provided for herein.

**SECTION 3. REPORT OF CONTROLLED BURNING REQUIRED:**

A. During times when a fire emergency has NOT been declared and open burning is allowed without permit, it shall be the duty of any person committing, creating, maintaining or permitting a controlled burn, to notify the Day County Sheriff's Office Dispatch Center that said controlled burn will be taking place.

This notification may be done by telephone to the Dispatch Center and should include the location of the fire, when it will occur, and what is being burned.

This notification requirement does NOT apply to small fires in burning barrels, or small fire of trash, leaves, branches or camp-fires.

B. Any person who shall create, commit, maintain, or permit to be created, committed, or maintained, an open burning without first notifying the Day County Sheriff's Office Dispatch Center, shall be deemed in violation of the Ordinance and subject to all criminal and civil penalties provided herein.

**SECTION 4. PENALTY AND REMEDY.**

A. Penalty. A violation of this Ordinance shall be punishable by a fine of up to Two Hundred and no/100 Dollars (\$500.00), or thirty (30) days in jail, or both for each offense. Each and every day that the violation continues shall constitute a separate offense.

B. In addition, a violation of the Ordinance shall constitute a public nuisance and in addition to all other remedies provided herein, the State's Attorney may, by civil process, seek permanent abatement of said nuisance pursuant to SDCL Chapter 21-8.

**SECTION 5. SEVERABILITY.**

If any provision of this ordinance shall be held invalid, it shall not affect any other provisions of this ordinance that can be given effect without the invalid provision, and for this purpose, the provisions of this ordinance are hereby declared to be severable.

As adopted by the Day County Commission on June 6, 2024.

Kelsey Kading

Day County Auditor