

FREMONT COUNTY ORDINANCE NO.: \_\_\_\_\_

## **OPEN BURNING ORDINANCE**

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF FREMONT COUNTY, IDAHO, DEFINING "OPEN BURNING," "UNCONTROLLED," "UNATTENDED," AND "FIRE PIT;" GENERALLY PROHIBITING UNAPPROVED OPEN BURNING; PROVIDING FOR CERTAIN EXEMPTIONS; ESTABLISHING A PERMIT PROCESS; ESTABLISHING A FEE FOR A PERMIT; AUTHORIZING ENFORCEMENT; REPEALING ANY CONFLICTING RESOLUTION OR ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners, as the governing body in and for Fremont County, finds, and recognizes that it is common knowledge that from time to time there exists an extreme or serious danger and threat of forest fires, grass fires, and wildfires due to dry weather and vegetation conditions in the County and that fires have routinely or periodically occurred during dry weather conditions in the County causing property damage and risk of loss of life; and,

WHEREAS, the Board of County Commissioners and other state and federal governmental agencies have previously resolved, ordained, and enacted local disaster emergencies related to fire risk and actual fires, and are likely to resolve, ordain, or enact burning or fire emergencies in the future; and,

WHEREAS, the Board finds and declares that an emergency often exists in the County concerning the likelihood of forest fires, grass fires, and wildfires resulting from the dry weather and vegetation conditions in the County and the increased recreational use of properties within the County, particularly during the summer and fall seasons, and the Board finds that such conditions are recurring and frequent; and,

WHEREAS, the Board of County Commissioners has authority to pass ordinances for the safety, prosperity, good order, and protection of property therein, of the County and its inhabitants pursuant to Idaho Code § 31-714; and,

WHEREAS, it is in the public interest and serves a public purpose that this ordinance be adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREMONT COUNTY, IDAHO, AS FOLLOWS:

### **SECTION ONE – Definition of "Open Burning," "Uncontrolled," and "Unattended":**

The term "Open Burning" as used under this ordinance shall mean igniting or maintaining a fire outside of an enclosed building, dwelling structure, or completely enclosed heating or cooking appliance, which shall be defined as any outdoor fire, including but not limited to campfires, warming fires, charcoal grill fires, fused explosives, out-of-season ground fireworks (e.g. "firecrackers" or "roman candles," as defined by Idaho Code Title 39 Chapter 26 - Fireworks), any special or aerial fireworks (e.g. "bottle rockets," as defined by Idaho Code § 39-2602), firing of model rockets, exposure to flame of any flammable, inflammable, combustible, or explosive material or container (e.g. propane tanks, batteries, tires, or homemade explosives), wild lands, trash and debris; but shall not apply to commercial fireworks as permitted by Idaho Code § 39-2605, shall not apply to in-season fireworks as permitted by Idaho Code § 39-2606, shall not apply to charcoal grill fires at private residences, and shall not apply to permanent fire pits (as defined herein) or fire grates located on private property, developed picnic grounds, or campgrounds on public and private lands within the County.

The term "Uncontrolled" as used under this ordinance shall mean any outdoor fire that is out of control; which is not burning within the confines of cleared firebreaks; or that cannot be suppressed or extinguished with the resources or ordinary tools commonly available to the responsible party. The uncontrolled state of an outdoor fire may result from any intentional, negligent, or accidental circumstance.

The term "Unattended" as used under this ordinance shall mean the neglect of any outdoor fire by a lack of supervision, abandonment by a responsible party, or failure to use reasonable and proper fire management precautions. Any failure to completely and fully extinguish all flames, embers, coals, sparks, or hot spots such that they cannot reignite shall be considered neglect and be "Unattended" as defined herein.

“Fire Pit” under this ordinance shall mean an excavation of approximately sixteen (16) inches in depth in the ground; surrounded with rocks, stones, bricks, or other non-flammable objects, that protrude at least six (6) inches above the undisturbed ground level; located in an area kept clear of trees, brush, and tall grasses; and with the excavated soil kept nearby, along with a shovel, for the purpose of fire suppression or extinguishment.

While this ordinance is not intended to restrict the burning of ditch banks, and fence rows. Burnings of those types must also be attended and controlled. An unattended burning of this type that is not controlled and damages the property of another is in violation of this ordinance.

**SECTION TWO – Prohibition of Open Burning, Enforcement, and Procedures:**

OPEN BURNING PROHIBITED – VIOLATIONS – PENALTIES.

- a. Any expenses incurred by the County, any fire district, or other government entity, in combating, suppressing, and/or extinguishing any fire resulting from a violation of this ordinance shall be assessed to and borne by any and all responsible parties.
  - b. Nothing in this ordinance shall be construed to limit any expense, penalty, or liability assessed by any other local, state, or federal governmental agency.
2. EXEMPTIONS. This Ordinance shall not apply to
- a. For otherwise permitted agricultural purposes;
  - b. Within properly supervised and screened residential “burn barrels;” or
  - c. Engaged in pursuant to a permit or license issued by any other local, state or federal governmental agency of competent jurisdiction; or
  - d. Engaged in by any employee, contractor or agent of any local, state or federal governmental agency in the course of performance of their official duties or employment.
3. ENFORCEMENT. The provisions of this ordinance may be enforced by the Sheriff and any peace officer of the State of Idaho. In addition, the Sheriff and/or any peace officer of the State of Idaho, is authorized to extinguish or cause to be extinguished any open fire ignited or maintained in violation of this ordinance which shall include any permitted or exempt fire that is deemed to be uncontrolled or unattended, with the full expense of such extinguishment being assessed to and borne by the responsible parties.
4. OPERATION OF OTHER LAWS NOT AFFECTED. Nothing in this ordinance or any permit shall exempt any person from the operation of or compliance with any other state, federal or local law, regulation or ordinance.
5. NO LIABILITY. Fremont County, its officials, employees and agents shall not be liable for any claim or cause, regardless of the nature thereof, arising directly or indirectly from the granting or denial of any permit under this ordinance or performance of any official duty hereunder.

**SECTION THREE – Ordinance Conflict Resolution:**

All extant resolutions and ordinances, or parts thereof, in conflict herewith are hereby repealed .

**SECTION FOUR – Effective Date:**

This Ordinance shall become effective upon its adoption by the Board of County Commissioners and be in full force and effect as of the date of its publication, as required by law.

DULY PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010

APPROVED

\_\_\_\_\_  
Paul Romrell, Chairman of the Board of Commissioners

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Ronald "Skip" Hurt, Commissioner

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Lee Miller, Commissioner

ATTEST:

APPROVED AS TO FORM:

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Abbie Mace, County Clerk

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Joette Lookabaugh, Prosecuting Attorney