

CUSTER COUNTY ORDINANCE NO. 20

AN ORDINANCE REGULATING OPEN BURNING IN CUSTER COUNTY

PURPOSE: This ordinance addresses the area of Custer County that lies east of South Dakota Highway 79 outside of the Black Hills Forest Fire Protection District (BHFFPD). Within the BHFFPD, open burning is not allowed without a permit, pursuant to SDCL 34-35-15. The South Dakota Wildland Fire Division is the administrator of all permitting pursuant to SDCL 34-35-16 in the BHFFPD and all applicable laws within that district.

WHEREAS, the Commissioners of Custer County (the "Commission") are charged with protecting the health, safety and general welfare of the citizens of Custer County, including all property situated therein; and

WHEREAS, SDCL 7-8-20(18) authorizes the Commission to prohibit or restrict open burning, after consultation with local fire officials and law enforcement officials, in order to protect the public health and safety; and

WHEREAS, the Commission previously enacted Custer County Ordinance No. 14 in 2007 to provide penalties for violation of burn bans and permits; and

WHEREAS, the Commission desires to repeal Custer County Ordinance No. 14 and replace the provisions of Ordinance No. 14 with this Ordinance No. 20; and

WHEREAS, the Emergency Management Services Director of Custer County has consulted with local fire officials and law enforcement officials concerning the need to regulate open burning under certain conditions that pose a threat of wildfire; and

WHEREAS, the Commission hereby deems it necessary to adopt the restrictions set forth in this Ordinance No. 20 in order to reduce the threat posed to the citizens and property of Custer County by wildfires.

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

SECTION I. DEFINITIONS:

- A. **Open Fire:** Means any outdoor fire, including campfires and burn barrels, which is not contained within a fully enclosed fire box or structure from which the products of combustion are emitted directly to the open atmosphere without passing through a stack, duct or chimney. Open Fire shall NOT include Charcoal Grills, Liquid Fuel Grills, as defined herein.
- B. **Charcoal Grill:** Means a metal or stone device not resting on the ground with a metal grate designed to cook food using charcoal briquettes, char wood, hard wood, or similar fuel.
- C. **Liquid Fuel Grill:** Means a metal or stone device designed to cook food using liquefied or gaseous combustible fuel.
- D. **Burn Barrel:** Means a metal container used to hold combustible or flammable waste materials so they can be ignited outdoors for the purpose of disposal. Burn Barrels must be covered with a metal grate at any time when being used. Burn Barrels must be located in a safety zone devoid of all combustible materials 15 feet in radius from the center of the burn barrel while in use.
- E. **Outdoor Fireplace:** Means a manufactured appliance constructed of non-combustible materials, with a maximum fuel area of three (3) feet, fueled by cut or split wood, located not closer than 15 feet to any combustible surface and continually attended.
- F. **Campground:** Means any permitted commercial campground operated by private individuals or corporations, the State of South Dakota, or the United States Forest Service.

SECTION II. REGULATIONS:

A. **Open Fire:**

1. No person shall set any open fire when the National Weather Service has declared the Grassland Fire Danger Index to be in the Very High or Extreme category, or a High Wind Watch or Warning, Fire Weather Watch, or Red Flag Warning issued for Custer County from time to time. The prohibition against

Open Fire as provided herein shall automatically be suspended during any time period the Grassland Fire Danger Index falls below the Very High category, and no High Wind Watch, or Warning, Fire Weather Watch, or Red Flag Warning is in place.

B. Burn Barrels:

1. Special regulation: No person may ignite a fire in a burn barrel when the National Weather Service has declared the Grassland Fire Danger Index to be in the Very High or Extreme category, or a High Wind Watch or Warning, Fire Weather Watch, or Red Flag Warning issued for Custer County from time to time. Use of burn barrels as defined herein is allowed anytime during which the Grassland Fire Danger Index falls below the Very High category and no High Wind Watch, or Warning, Fire Weather Watch, or Red Flag Warning is in place.

C. Campgrounds:

1. The ban on open burning does not apply to those designated areas falling within the boundaries of any permitted commercial, state or federal campgrounds unless otherwise specifically banned by resolution of Custer County Board of Commissioners.

SECTION III. PENALTY FOR VIOLATIONS:

- A. Anyone who fails to perform any act required or who does any prohibited act pursuant to this ordinance, and upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars (\$500) or by imprisonment for a period not to exceed thirty (30) days, or by both fine and imprisonment for each offense, pursuant to SDCL 7-18A-2.
- B. Additionally, pursuant to SDCL 34-35-9, and 34-35-10 and 10.1, and 34-35-12, as amended from time to time, any violator of this ordinance may also be subject to additional penalties and costs associated with causing or setting a fire and the suppression costs of extinguishing any fire resulting therefrom.
- C. Nothing herein shall be construed to prohibit or supersede any civil remedy otherwise available to any person or entity.

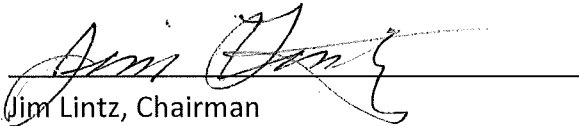
- D. The permissibility of the ignition of any fire as specified herein shall not operate to relieve the ignitor of any duty of care otherwise imposed by law; nor shall this ordinance operate to absolve any person of any liability for damages to persons or property which may occur as a result of any fire.
- E. This ordinance does not supersede applicable state or federal law, and people shall comply with and remain subject to applicable state and federal law and any penalties associated with applicable state and federal law.

SECTION IV. REPEAL OF CUSTER COUNTY ORDINANCE NO. 14:

The Commission hereby repeals Custer County Ordinance No. 14 – To Establish Penalties for Violation of Burn Bans and Permits (Dated July 25, 2007).

Adopted this 14th day of April, 2021 by the Custer County Commission. This Ordinance No. 20 shall become effective on the twentieth (20th) day after publication.

CUSTER COUNTY COMMISSION:


Jim Lintz, Chairman

ATTEST:


Teresa Cornelison, Auditor

First Reading: April 14, 2021

Second Reading: April 28, 2021

Adopted: April 14, 2021

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