

6/1/22  
A. Tresemer

## RAVALLI COUNTY ORDINANCE NO. 42

### AN ORDINANCE ADOPTING RAVALLI COUNTY FIRE PERMIT AND CONTROL REGULATIONS

1. **Findings and Purpose.** The Board of Ravalli County Commissioners ("Board") finds that:

It is in the interest of Ravalli County to preserve and protect property and persons from fire. Changing weather conditions may increase the danger of uncontrolled fires.

Given the limitations or potential unavailability of fire suppression resources, public officials should have the power to restrict certain burning activities.

The Ravalli County Sheriff's Office and rural fire district(s) and fire service area personnel investigate numerous reports of fires placing a strain on valuable time and resources. Fires ignited during unfavorable burning conditions also create a burden on fire protection agencies as well as creating a civil and criminal liability for the individual igniting the fire.

2. **Authority.** The Board has the authority to adopt ordinances pursuant to the procedures set forth in Title 7, Chapter 5, Part I, MCA. The Board and each of the rural fire districts and fire service areas may establish controlled burning seasons and permit requirements for its respective jurisdiction or protection area pursuant to §7-33-2205, MCA. The Board also has authority and fire protection duties set forth in §7-33-2202, MCA. Rural fire districts and fire service areas in Ravalli County have the authority and obligation to protect against fire pursuant to §7-33-2105 and 7-33-2402, MCA. Finally, the County Commission can restrict activities in high fire hazard areas pursuant to §7-33-2212, MCA.

3. **Penalty & Enforcement.** The penalty for certain violations of the regulations adopted under this ordinance and state law is a \$500 fine and 6 months imprisonment or both. The penalties for Open Burning Permit violations herein are authorized in §7-33-2206, MCA. In addition, other civil legal remedies are available pursuant to state law and this ordinance.

If a person burns in a manner that is unsafe, damages property belonging to another, or places anyone in danger of injury or death, the Arson laws apply. Negligent arson, § 45-6-102, MCA, can be either a misdemeanor or a felony, depending on the circumstances. Misdemeanor charges can cost up to \$500 and/or 6 months in jail. Felony charges can cost up to \$50,000 and/or up to 10 years in prison.

4. **Severability.** If any part of this Ordinance is unenforceable then the remainder shall be enforceable.

5. **Effective Date.** The Ravalli County Clerk and Recorder shall post a copy of this Ordinance and make copies available to the public upon first reading and approval. This Ordinance shall take effect thirty (30) days after its second reading and approval which shall be not less than 12 days apart from the first reading as required by § 7-5-103, MCA and has been filed with the Clerk & Recorder as required by §7-5-105, MCA.

6. **Ravalli County Fire Control Regulations Adopted.** This Ordinance hereby adopts any Ravalli County Fire Control Regulations, which are incorporated into this Ordinance by reference.

7. **Absolute Liability Finding.** This Ordinance has the legislative purpose to impose absolute liability for any conduct described. Pursuant to §45-2-104, MCA any violation of this Ordinance or Regulations adopted thereunder is subject to absolute liability. A person may be guilty of an offense without having, as to each element of the offense, one of the mental states of knowingly, negligently or purposely.

8. **Repeal and Ratification.** Upon the effective date of this Ordinance, all valid permits issued and action taken pursuant to this Ordinance are ratified, confirmed, and adopted in lieu of any requirement for an additional permit.

The effective date of this Ordinance shall be \_\_\_\_\_, and it shall be in effect until \_\_\_\_\_.

Accordingly, the Board of County Commissioners hereby adopt this ordinance.

APPROVED AND PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

FIRST READING & APPROVAL DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Dan Huls, Chair

\_\_\_\_\_  
Greg Chilcott, Member

\_\_\_\_\_  
Jeff Burrows, Member

\_\_\_\_\_  
Attest: Regina Plettenberg, Clerk and Recorder

SECOND READING & APPROVAL DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Dan Huls, Chair

\_\_\_\_\_  
Greg Chilcott, Member

\_\_\_\_\_

## RAVALLI COUNTY FIRE CONTROL REGULATIONS

**Section I. Definitions.** The following terms have the following meanings in these regulations:

"Board" means the Board of Ravalli County Commissioners.

"Fire Chief" means a fire chief of a governmental fire agency organized under Title 7, Chapter 33, Montana Code Annotated with the powers and duties set forth in §7-33-2001, MCA. Fire Chief also means an agent or designee of a "Fire Chief."

"Open Burning" means the ignition, setting or burning of any material directly in the open air including slash, land-clearing or debris burning fires. Open Burning does not include a Recreational Fire.

"Open Burning Season" is established from March 1 through \_\_\_\_\_ of each year as the time when Open Burning can take place. No Permits will be issued for dates outside of Open Burning Season.

"Permit" is a document issued by the Ravalli County Sheriff's Office which provides permission to ignite or set a fire pursuant to these regulations. A Permit does not allow the ignition, setting or burning of materials prohibited by state or federal law.

"Permit Holder" means the person, firm or corporate entity to whom a Permit is issued or the individual person acting as its agent or designee.

"Recreational Fire" means a fire ignited, set or burning in a nonflammable structure measuring less than 48 inches and for which a reasonably prudent and suitable source of extinguishing the fire is available.

### Section 2. Permits.

A. A Permit is required for Open Burning during Open Burning Season.

B. Preparation of Permits. The Ravalli County Sheriff's Office shall prepare and issue Permits for its respective jurisdiction or protection area in accordance with the Open Burning Seasons established herein. A Permit will be valid for only one Open Burning Season.

C. Issuing Permits. Permits are issued by the Ravalli County Sheriff's Office. Agencies may facilitate the obtaining of a Permit.

D. Permit Fees. The cost of the Permit program is borne by the County Commission.

E. Permit Acknowledgement of Duties. Applicants must acknowledge in writing that they have read, understand, and agree to the requirements of the Permit and these regulations. Such acknowledgment must include the applicant's obligation to follow state regulations and laws for burning not set forth in this regulation.

**Section 3. Open Burning Conditions.** The following conditions are imposed upon any Permit or Permit Holder:

A. State DEQ Open Burning Season Limitation. During the months of September, October, and November of any Open Burning Season, a Permit Holder should contact the State of Montana, Department of Environmental Quality to determine if any State air quality restrictions are in place.

B. Notice. Prior to Open Burning, a Permit Holder must activate its Permit.

C. Preparation. Before setting an Open Fire, a Permit Holder shall ensure that reasonably prudent and suitable sources of fire suppression equipment and personnel are present for fire control based on the conditions for the duration of the burn.

D. Safety Conditions. No fire shall be set if wind or weather conditions make it hazardous to burn. If wind or other weather conditions create a hazardous fire condition, the fire must be extinguished as quickly as possible.

E. Suspension of Permits. Permits may be suspended by any jurisdiction or protection area through the Ravalli County Sheriff's Office or its Fire Chief at any time when hazardous fire conditions exist in the area of Open Burning. Permit Holders shall extinguish fires upon request of the Ravalli County Sheriff or any Fire Chief.

G. Fire Control. A Permit Holder shall not leave the immediate area of Open Burning until the fire has been completely extinguished, with no remaining embers or smoke.

**Section 4. High Fire Hazard Areas and Fire Restrictions.**

A. Limitation of Activities. The Board, through resolution, may require any person, firm or corporate entity to limit specific operations or activities or adjust working hours to a less critical period of the day for operations or activities conducted in Ravalli County, as designated by the Board. Such requirements shall be based on conditions that are deemed not safe for such operations or activities due to weather, fire activity, resource availability or other relevant factors.

B. Burning, Operations and Activities Ban. The Board may additionally require any person, firm or corporate entity to cease any or all operations or activities including all burning activity in Ravalli County including:

a. Open Burning;

b. Any fire hazard reduction agreement burns, pursuant to Title 76, Chapter 13, Part 4, Montana Code Annotated;

c. Any Recreational Fires; or

d. Any operations or activities.

The Board shall lift any requirement of this section when weather, fire activity, resource availability or other relevant factors change.

## **Section 5. Unlawful Activity.**

A. Criminal Enforcement. A person who ignites or sets a fire without a Permit is guilty of a misdemeanor. A Permit Holder who does not satisfy the Open Burning Conditions pursuant to Section 3 is guilty of a misdemeanor.

B. Additional Legal Remedies. The Board may take any civil legal action needed in order to enforce these regulations pursuant to §7-33-2212, MCA including actions for injunctive relief or obtain relief pursuant to §50-63-103, MCA.

DRAFT

**Alan Tresemer**

**30 year resident of Ravalli County**

**35 years firefighting, 20 years as Fire Chief, recently retired**

**I have spent some time studying the burn permit issue. I would like to share what I have learned.**

**What do we know for sure?**

**Due to jurisdictional authorities, the Ordinance at hand would have NO lawful effect over:**

- 1. Federal lands which make up most of Ravalli County**
- 2. Fire District lands which cover nearly all the private lands in the county**
- 3. State lands**
- 4. And incorporated city lands**

**These excluded areas cover nearly all of Ravalli County. Perhaps 99% where the ordinance would have no power.**

**Throughout my short presentation, I refer mostly to MCA 7-33-2205 and its support in MCA 76-13 Part 1.**

**Section 76 is the meat and potatoes and tells the where, when, how, and especially important, the why behind burn permits. The clear intent of these laws is to preserve natural resources, specifically timber-and-range lands and water sheds as defined by the DNRC. These laws overtly exclude everything else from burn permitting.**

**Permits are only to be issued for “wildland” areas as defined by the DNRC; thus, the Ordinance would have no effect over:**

- 5. Any agricultural area that is further than ½ mile from designated Forest or Range land**
- 6. Any Wildland Urban Interface area**
- 7. Any improved properties, that is, any property with any buildings, corrals, landscaping, towers, parking areas, signage...**

**To test my understanding of the law, I checked with:**

**2 county attorneys**

**The Montana State Legislative Services Division**

**The Fire Services Training School legal issues trainer and fire service attorney**

**And 5 Bitterroot fire chiefs**

**If these seasoned experts are to be believed, this Ordinance would have no legal foundation to require burn permits. Little of Ravalli County meets the legal test for a county ordinance burn permit requirement under Montana Code.**

Reviewing the Draft of the ordinance, I found 24 defects ranging from minor to incurable.

In the interest of time, I will touch on just the one third most concerning.

First Issue: "A permit is required for open burning." As stated, permits are rarely allowed by law. They are restricted to wildlands as defined by 76-13-102. Additionally, the Administrative Rules of Montana also restrict permits to "forest land" where there is "enough timber, standing or down, slash, or brush to constitute...a fire menace to life or property". In areas where there are also residences, [36.10.101](#) states that "Areas in which the concentration of residences and other buildings makes the primary fire protection problem one of structural fires rather than forest fires will not be classified as forest land. Class I Land shall include all forest lands primarily suitable for production of timber and forest land primarily suitable for joint use for timber production and the grazing of livestock..." This language is highly restrictive. Someone burning debris in their backyard, no matter how big a pile, cannot be subjected to a burn permit requirement.

Next. Permits are to be issued by the Sheriff's Office. This does not comply with state law. 76-13-121 requires the permit to be issued by the "Recognized Fire Agency" in that jurisdiction. That would be the fire districts. They have the power of the law and the expertise in fire issues. A county

**ordinance cannot lawfully control how a fire district deals with burn permits.**

**Next Issue: Authority to create an ordinance: A county governing body cannot create an ordinance that “allows for the assessment of a fee or fine”. By extending state law into the County and thus tying the Ordinance to state fines, the County creates fines that would not otherwise exist. This act fails the test of Montana law. The County oversteps its authority to create the Ordinance.**

**Several Similar Issues: Violations, Felony, Jail, Criminal Enforcement, Arson laws apply, Penalties, Fines, Imprisonment. These are statements used to instill fear to achieve compliance. After over two years of fear porn, Ravalli County citizens deserve a break. At least in this case, terror tactics are inappropriate for achieving compliance.**

**Regulations. “This Ordinance hereby adopts any Ravalli County Fire Control Regulations...” This suggests the ability and intent of the Commission to modify and add to the regulations without due public review. Even the current draft of Regulations contains many objectionable issues. Unrestricted authority to add to them should not be granted.**

**Absolute Liability: Black’s Law Dictionary and others define this concept: A person is guilty without the need for proof of fault or negligence. This language is usually only used in the most extreme situations, for instance, in the operation of a**

**nuclear power plant. Do the Citizens of Ravalli County really want to be treated as guilty no matter what? I am sure the Commissioners want to ensure the presumption of innocence for all of us.**

**The final and most egregious statement is at the beginning of the Ordinance and sets a tone: "...public officials Should have the power to restrict certain...activities." This is a dangerous philosophy. It is the approach used by bureaucrats, dictators, and police states. We see it today in China, Russia, even Washington DC. Our U.S. Constitution and Montana Constitution are designed to avoid giving any official such unrestrained power. Commissioners swear an oath to defend individuals from such powers.**

**If such power is given, that power should be most highly constrained. Obstacles should be in place to ensure that the official is not able to abuse the power. Such a statement is contrary to the concept of liberty.**

**We should rely on the power of the law rather than the power of any individual. The law is somewhat constant and trustworthy; people are neither.**

**In summary, although many have expressed a desire for this Ordinance, it would affect only a tiny bit of land and Montana law will not support it as written.**

**Other tools are available and already in place to achieve some of the vague goals.**