

ORDINANCE NO. 2012-02

OPEN FIRE BAN AND BURN PERMIT ORDINANCE

AN ORDINANCE PROVIDING A PROCEDURE TO BAN OPEN FIRES WITHIN ELMORE COUNTY, PROVIDING A PROCEDURE FOR FUTURE IMPLEMENTATION OF OPEN FIRE BANS WHEN NEEDED; IMPLEMENTATION OF AN OPEN BURNING PERMIT SYSTEM; PROVIDING FOR A VIOLATION OF THE ORDINANCE TO BE A MISDEMEANOR PUNISHABLE BY A FINE OF UP TO ONE THOUSAND DOLLARS (\$1,000.00) OR IMPRISONMENT OF UP TO SIX MONTHS OR BY BOTH SUCH FINE AND IMPRISONMENT; PROVIDING FOR CIVIL LIABILITY FOR COST OF CONTAINMENT AND DAMAGES CAUSED BY VIOLATION.

WHEREAS, the Elmore County Board of Commissioners (the "Board") values the lives and safety of Elmore County (the "County") residents and takes such matters affecting the same very serious;

WHEREAS, the Board finds, and recognizes that it is common knowledge, that from time to time there exists an extreme or severe danger and threat of forest fires, grassfires, 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;

WHEREAS, wildfires constitute a real threat to life and property in the County;

WHEREAS, the Board wants to take such actions as are necessary to preserve property and the safety of residents within the County;

WHEREAS, from time to time the Board will find it necessary to prohibit Open Fires, as defined herein;

WHEREAS, the Board finds that this ordinance is necessary for the preservation of the public health and safety for the reasons set forth herein;

WHEREAS, the Board finds that implementation of the procedures regarding bans on Open Fires and the implementation of an burn permit system will reduce the danger and likelihood of forest fires, grassfires, and wildfires in the County;

WHEREAS, the County Sheriff's Office is the appropriate agency to enforce violations of Open Fire bans imposed by this Ordinance and to manage the burn permit system, in the County, to the extent the same is not located within a Fire Protection District;

WHEREAS, pursuant to Idaho Code § 31-828, boards of county commissioners have the power and authority "[t]o do and perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government;" and

WHEREAS, the Board hereby finds, determines and declares that adoption of this Ordinance is necessary for the preservation and protection of the public health, safety and welfare of inhabitants of the County, and that it is in the best interests of the people of the

County and their property that the Board create a procedure for invoking future Open Fire bans and a burn permit system when conditions warrant.

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Elmore County, Idaho, the following Ordinance be passed and take effect as follows:

Section 1: Short Title and Purpose: This Ordinance shall be known and cited as the Open Fire Ban and Burn Permit Ordinance. The purpose of this Ordinance is to ban Open Fires, as defined herein, and to implement an open burning permit system, in all Unincorporated Areas of the County Outside Fire Protection Districts to lessen the danger fires in those areas.

Section 2: Definitions: For the purposes of this Ordinance, the following definitions shall apply. Any other words and phrases not defined in this Ordinance shall be given their ordinary, commonly understood and accepted meanings:

Open Fire: That definition set forth in the Implementation Resolution, as hereafter defined. In the event the Implementation Resolution does not contain a definition of Open Fire, then for all purposes under the Ordinance or the Implementation Resolution, an Open Fire shall be: any and all outdoor fires, including but not limited to, campfires, warming fires, all explosives, firing of model rockets, discharge of tracer bullets, exploding targets, welding or operating an acetylene or other torch with open flame (other than in an area cleared of all flammable materials and with adequate firefighting equipment immediately available and on hand), the burning of trash and debris and open burning which is offensive or objectionable because of smoke or odor emissions or when atmospheric conditions or local circumstances make such fires hazardous. The **Open Fire shall not include or apply to:** (i) commercial fireworks within city limits; (ii) wood burning stoves and fireplaces located within an enclosed building(s); (iii) roadside emergency flares used for vehicle safety in a safe and prudent manner with regard to wildfire threat; (iv) recreational fires, as defined in the International Fire Code, shall be permitted so long as they are no closer than 25 feet from any structure and the fuel to be burned is no more than three feet in diameter and no higher than 2 feet in height and contained within a steel or concrete fire ring, barbecue grills located on personal residences when used in a safe and prudent manner with regard to wildfire threat; (v) the prescribed burning of fence rows, irrigation ditches, fields, and farmland when done in a safe and prudent manner with adequate firefighting equipment immediately available and on hand, with the greatest regard and consideration to the wildfire risks; and (vi) burning in farm burn barrels, when used in a safe and prudent manner with regard to wildfire threat.

Unincorporated Areas of the County Outside Fire Protection Districts: All public (to the greatest extent allowed by law) and private lands located in the County which are outside the city limits of any city within the County and outside the boundaries of any fire protection district formed pursuant to Title 31, Chapter 14, Idaho Code. This area is depicted on the map attached as **Exhibit A**.

Section 3: When this Ordinance is implemented by one or more resolutions of the Board in accordance with the provisions of this Ordinance ("Implementation Resolution") Open Fires of every kind and type are prohibited on all Unincorporated Areas of the County Outside Fire Protection Districts to the greatest extent permitted by law, unless such prohibition is specifically limited by the terms of the Implementation Resolution. An Open Fire ban shall be in effect in the County, when an Open Fire ban is put in place by the Implementation Resolution and it shall be

unlawful and a misdemeanor for any person to violate the terms of the Open Fire ban in Unincorporated Areas of the County Outside Fire Protection Districts during the time periods set forth in the Implementation Resolution. The Implementation Resolution may modify the definition of Open Fire, Unincorporated Areas of the County Outside Fire Protection Districts or may limited burn restrictions to just certain areas of the County or any other further limitations as set forth in the Implementation Resolution.

The Open Fire ban authorized to be imposed by the terms of this Ordinance shall be implemented by:

- (A) Adoption of the Implementation Resolution by the Board declaring that conditions and circumstances within the County necessitate the imposition of an Open Fire ban to protect the health, safety, and welfare of the public. Such resolution shall specifically state that the resolution is intended to implement the Open Fire ban authorized by this Ordinance; and
- (B) That established evaluation criteria then currently in use by federal, state and local Fire suppression/management agencies for monitoring fuel moistures, fire dangers class, then current impacts on suppression resources, then current fire cause types, weather forecasts and other predictive fire danger may be considered by the Board; and
- (C) The County may consider and, where deemed appropriate by the Board, undertake efforts to advertise and publicize each Open Fire ban implemented by resolution accordance with this Ordinance. Such efforts may include, but are not limited to, any one or more of the following: recording of the resolution in the records of the County Clerk/Recorder, posting of the resolution on the County website, publication of the resolution and notices in one or more newspapers and publications circulated within the County, the erection of signs referring to the Open Fire ban along public thoroughfares and/or in public places within the County, and/or notification sent to fire districts, the Idaho State Department of Lands, the United States Forest Service, the Bureau of Land Management, municipalities and other public agencies informing such agencies of the County Open Fire ban. The failure to undertake any such additional efforts to advertise and publicize the Open Fire ban shall not invalidate or preclude the enforcement of this Ordinance as implemented by any such resolution.

Section 4: An Open Fire ban imposed and implemented in accordance with this Ordinance shall commence upon the date set forth in the resolution and shall remain in effect until the date identified in such resolution, if any, or the date of repeal of the resolution by a further resolution of the Board.

Section 5: All burning and Open Fires in the County shall at all times be subject to any and all state and federal laws and regulations, including but not limited to air quality and health and safety concerns..

Section 6: The County Sheriff ("Sheriff") will implement an "Open Burning Permit System" for the purpose of permitting individuals to safely burn slash, slash piles, forest management slash, grasses and debris. In collaboration with County Fire Protection Districts, the open burning permit system will provide private property owners education and required procedures for safe slash and debris burning. The County open burning permit system, and the burn permit forms, currently being used and managed by the Sheriff's Office, are hereby adopted as the

open burning permit system for the County. The open burning permit system also includes the following additional provisions:

6.1 No person shall conduct any Open Fire or open burning within an Unincorporated Area of the County Outside Fire Protection Districts without obtaining and holding a valid and effective open burning permit, and notifying the Sheriff's Office of any proposed Open Fire, open burning under the open burning permit, and in all other respects complying with the open burning permit system, requirements, and the open burning permit, including but not limited to calling the County Dispatch and where required the State of Idaho, Department of Lands.

6.2 The Sheriff's Office may, in authorizing a burn under an open burning permit, require the person who will be conducting the burn to notify contiguous land owners, of the date, time and location of any burning pursuant to an open burning permit.

6.3 Broadcast burns conducted within federal and state guidelines that have a written prescribed fire plan and agricultural burns are hereby exempted from the open burning permit system.

6.4 Nothing in the County open burning permit system infringes upon or otherwise affects the ability of agricultural producers to conduct burning on their property.

6.5 Provisions or procedures of the open burning permit system may be amended by the Sheriff, with the prior approval of the Board, by motion or resolution.

Section 7: The Sheriff and the Sheriff's officers, deputies, designees and agents are authorized by the Board to enforce the prohibition on Open Fires implemented by such resolution(s) adopted as provided in this Ordinance. The Sheriff shall be responsible for the administration of this Ordinance and the implementation and administration of the open burning permit system. All inquiries regarding the current status of Open Fire restrictions and bans in the County should be directed to the Sheriff's Office.

Section 8:

8.1 Violations of this Ordinance shall be a misdemeanor and may be prosecuted and upon conviction or confession of guilt thereof shall be punished by a fine of not more than One Thousand and 00/100 Dollars (\$1,000.00) for each violation of this Ordinance. The minimum fine shall be One Hundred and 00/100 Dollars (\$100.00) and the maximum fine shall be One Thousand and 00/100 Dollars (\$1,000.00). It is the intent of this Ordinance that the fine for repeated or multiple violations of an Open Fire ban implemented as provided herein, or of the burn permit system, by any one person, shall be significantly increased.

8.2 The Sheriff shall have the authority to take a violator or violators into custody for violations of this Ordinance. Criminal prosecution may be brought against a violator under state statutes or under the penalty assessment procedure provided herein.

8.3 Each violation of this Ordinance shall be deemed separate and distinct from any other violation of this Ordinance or of any federal, state, or local law, rule, order or regulation, and each day during which violation of this Ordinance continues shall be deemed a separate offense.

8.4 When a person is issued a summons and complaint for a violation of this Ordinance, the issuing officer shall have the authority, but not be limited to, to issue a penalty assessment notice pursuant to and authorized by this Ordinance to the person. The penalty assessment notice shall be a summons and complaint, shall identify the alleged offender, shall specify the offense and applicable fine and shall require that the alleged offender pay the fine or appear to answer the charge at a specified time and place. A duplicate copy shall be sent to the Clerk of the County Court. If the person given a penalty assessment notice chooses to acknowledge guilt, he/she may pay the specified fine in person or by mail at the place and within the time specified in the notice. If he/she chooses not to acknowledge his/her guilt, he/she shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be that specified in the notice for the offense of which he/she was found guilty. Customary court costs may be assessed against him/her in addition to the fine.

8.5 Each violation of any provision of this Ordinance is punishable as follows:

First Violation	A fine of one hundred dollars (\$100.00)
Second Violation	A fine of five hundred dollars (\$500.00)
Third and subsequent violations	A fine of one thousand dollars (\$1000.00) for each subsequent violation

8.6 Additionally for repeat violators in addition to the above listed fines, the violators may be imprisoned in jail of up to six (6) months.

Section 9: No dry vegetation, Christmas trees, or any other combustible material may be stored, displayed, sold or otherwise kept within twenty-five (25) feet of any structure.

Section 10: In the event the State of Idaho (the "State"), the Bureau of Land Management ("BLM") or the United States Forest Service ("Forest Service") have issued burning regulations pertaining to public lands within their respective jurisdictions in the County, in conflict with this Ordinance, strictest of such rules, regulations of the State, BLM or the Forest Service shall control.

Section 11: Any person who willfully or negligently is responsible for the starting or permitting an Open Fire in violation of this Ordinance shall be liable for the costs incurred by federal, state or local agencies or their authorized representatives in controlling or extinguishing the same, as well as damages to life and property arising from such a violation of this Ordinance. The amount of such costs shall be recovered by a civil action prosecuted in the name of the County, those persons damaged or the agency seeking reimbursement. Civil liability provided herein shall be exclusive of, and in addition to, any criminal penalties provided herein.

Section 12: Where any provision of this Ordinance conflicts with any other provision of this Ordinance, or any other law or ordinance or the Implementing Resoluton, the more stringent requirement, regulation, restriction or imitation shall apply. Notwithstanding the foregoing, it is the intent of the Board that this Ordinance completely embody all rules, regulations and requirements pertaining to the burn bans for Open Fires within the Unincorporated Areas of the County Outside Fire Protection Districts. Therefore, all prior Resolutions and Ordinances, heretofore adopted by the Board in relation to the matters contained herein, are hereby declared null, void and of no effect as of and for matters occurring after the Effective Date of this Ordinance, except that the County Fireworks Ordinance, Ordinance No. 2007-6 shall not be rescinded by this Ordinance and the Fireworks Ordinance shall remain in full force and effect..

To effectuate this purpose, Resolution 477-12 is hereby rescinded as of and for matters occurring after the Effective Date of this Ordinance.

Section 13: The discharge or use of fireworks shall be governed by the County Fireworks Ordinance, which ordinance shall remain in full force and effect. Ordinance No. 2007-6.

Section 14: Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof other than the parts so declared to be unconstitutional or invalid.

Section 15: This Ordinance shall be effective upon its passage, approval and publication according to law.

This Ordinance is enacted, approved and adopted by the Elmore County Board of County Commissioners as an ordinance on this 10TH day of ~~September~~ 2012.



Board of Elmore County Commissioners

By: *Arlen O. Shaw*
Arlen O. Shaw, Chairman

By: *Albert Hofer*
Albert Hofer, Commissioner

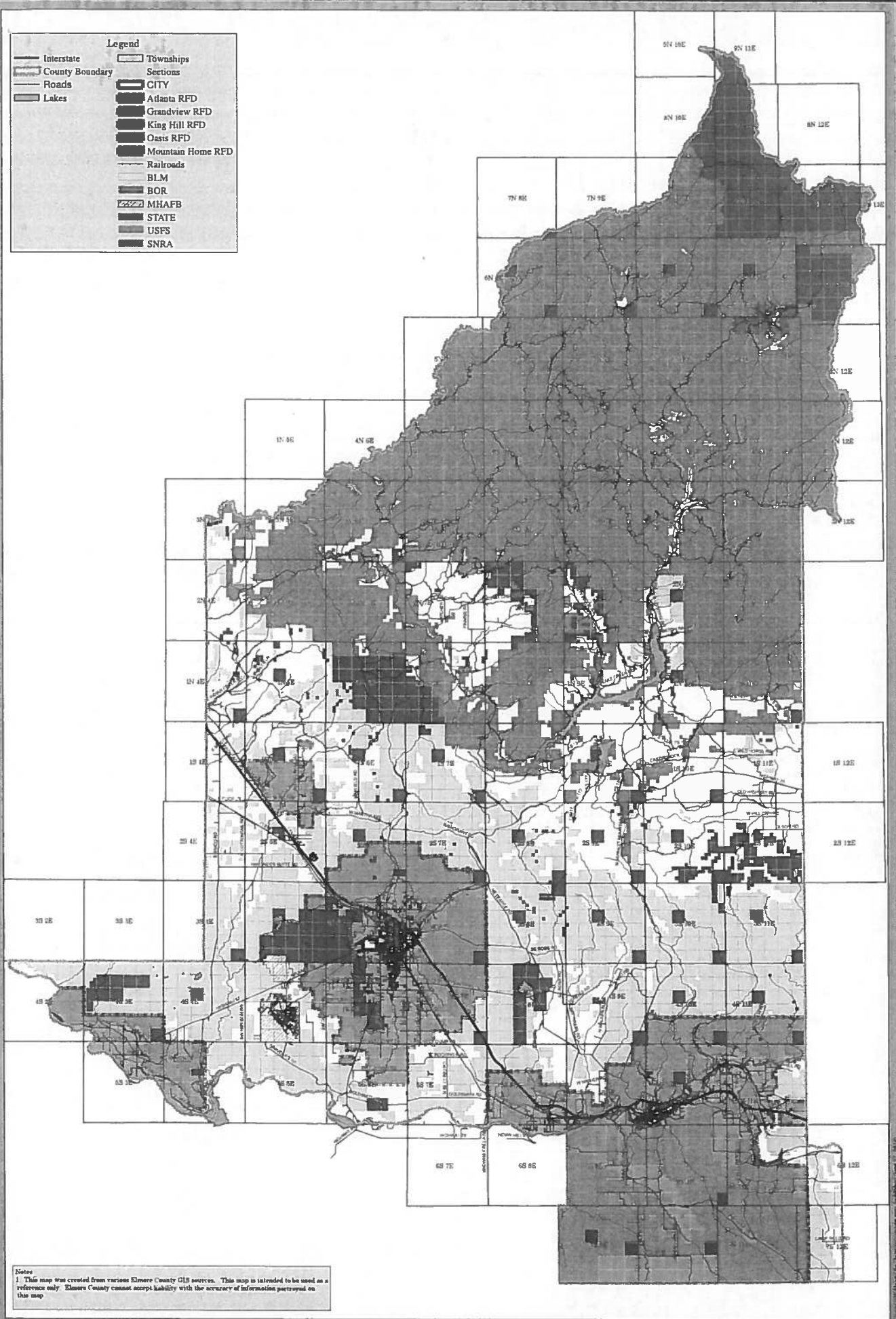
By: *Wesley R. Wootan*
Wesley R. Wootan, Commissioner

ATTEST:

Barbara Steele
Barbara Steele, Elmore County Clerk

PUBLISHED: SEPTEMBER 26, 2012

- Legend**
- Interstate
 - County Boundary
 - Roads
 - Lakes
 - Townships
 - Sections
 - CITY
 - Atlanta RFD
 - Grandview RFD
 - King Hill RFD
 - Oasis RFD
 - Mountain Home RFD
 - Railroads
 - BLM
 - BOR
 - MHAFB
 - STATE
 - USFS
 - SNRA



Notes
 1 This map was created from various Elmore County GIS sources. This map is intended to be used as a reference only. Elmore County cannot accept liability with the accuracy of information portrayed on this map.

Elmore County, Idaho - Burn Ban



SUMMARY FOR ORDINANCE NO. 2012-02

OPEN FIRE BAN AND BURN PERMIT ORDINANCE

AN ORDINANCE PROVIDING A PROCEDURE TO BAN OPEN FIRES WITHIN ELMORE COUNTY; PROVIDING A PROCEDURE FOR FUTURE IMPLEMENTATION OF OPEN FIRE BANS WHEN NEEDED; IMPLEMENTATION OF AN OPEN BURNING PERMIT SYSTEM; PROVIDING FOR A VIOLATION OF THE ORDINANCE TO BE A MISDEMEANOR PUNISHABLE BY A FINE OF UP TO ONE THOUSAND DOLLARS (\$1,000.00) OR IMPRISONMENT OF UP TO SIX MONTHS OR BY BOTH SUCH FINE AND IMPRISONMENT; PROVIDING FOR CIVIL LIABILITY FOR COST OF CONTAINMENT AND DAMAGES CAUSED BY VIOLATION.

PASSED AND ORDAINED, at a regular meeting of the Elmore County Board of Commissioners, on September 10, 2012. This ordinance will be in full force and effect from and after its passage, approval and publication. The following is a summary of Ordinance No. 2012-02, published in compliance with Idaho Code §31-715A. A full text of this ordinance is available for public inspection in the Elmore County Recorder's Office, Elmore County Courthouse, 150 South 4th East, Mountain Home, Idaho. Office hours are from 9:00 AM to 5:00 PM, Monday through Friday, excluding holidays.

This ordinance includes Sections 1 through 15: Section 1 – Short title and Purpose; Section 2 – Definitions; Section 3 – Open Fire, as defined in the Ordinance, bans are is implemented by resolution, in the Unincorporated Areas of the County Outside Fire Protection Districts, as defined in the Ordinance; Section 4 – establishes dates of Open Fire bans; Section 5 – Ordinance subject to federal and state law and regulations; Section 6 – The Elmore County Sheriff will implement an Open Burning Permit System; Section 7 – Sheriff to enforce the Ordinance; Section 8 – Violations of the Ordinance shall be a misdemeanor punishable by a fine of up to One Thousand Dollars (\$1,000.00) and/or imprisonment of up to six months; Section 9 – No dry vegetation or other combustible material to be kept within twenty-five feet of any structure; Section 10 – in the event of conflict between burn restrictions under the Ordinance and other state or federal law, the strictest rule shall control; Section 11 - Provides for civil liability for damages caused by violating the Ordinance; Section 12 – if the Ordinance is in conflict with other ordinances or laws, the strictest shall control; the Ordinance supersedes all conflicting resolutions or ordinances, except the County Fireworks Ordinance, Ordinance No. 2007-06 shall remain in full force and effect; Section 13 – use of fireworks in the county is governed by Ordinance No. 2007-06; Section 14 – validity of Ordinance to remain if parts are unconstitutional; Section 15 – Ordinance is effective upon publication.

Ordained and enacted by the Elmore County Board of Commissioners as Ordinance No. 2012-02 on September 10, 2012.

ELMORE COUNTY COMMISSIONERS

/S/ ARLEN O. SHAW, Chairman

/S/ ALBERT HOFER, Commissioner

/S/ WESLEY R. WOOTAN, Commissioner

ATTEST: /S/ BARBARA STEELE, Clerk

1 Publication: September 26, 2012

The Elmore County Clerk under seal of the Board of County Commissioners hereby certifies that the foregoing summary is true and complete and provides adequate notice to the public of the contents contained in Ordinance 2012-02.



Barbara Steele, Elmore County Clerk

(Seal)

