

## **MARSHALL COUNTY ORDINANCE NO. 48**

**WHEREAS**, the Commissioners of Marshall County are charged with protecting the health and safety of the citizens of Marshall County, including all property situated therein; and

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

**WHEREAS**, the Commissioners of Marshall County have determined that in the interest of public health and safety, it is prudent to prohibit open burning when climatic conditions indicate the threat of wildfire in Marshall County; and

**WHEREAS**, the Commissioners of Marshall County have determined that it is in the interest of public health and safety that Marshall County be notified when and where open burning is occurring so that emergency resources are effectively used within Marshall County; and

**WHEREAS**, the Commissioners of Marshall County, pursuant to SDCL § 7-18A-8, hereby deem it necessary for the immediate preservation of the public health and safety to adopt the restrictions set forth in this Ordinance and it is the intent of the Marshall County Board of Commissioners that the provisions of this Ordinance shall Take effect immediately upon passage by the Board.

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

### **SECTION I DEFINITION:**

- A. **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 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 any 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.

### **SECTION II REGULATIONS:**

- A. **Reporting of Controlled Burns.** Anyone who burns off land or other flammable material shall before such burn notify the Marshall County Sheriff's Office by calling at 605-448-5181 and provide the following information:
- Location of the burn,
  - time of burn,
  - substance to be burned,
  - approximate completion time of the burn and
  - a contact phone number for the responsible person.

Anyone who violates this section in whole or part is guilty as described below in Section III.

- This reporting requirement shall not apply to the burning of household and yard waste, providing such burning is done so, safely. It shall be deemed negligent if such fire escapes the original site of the fire and shall be punishable in accordance with SDCL 34-35-9.
- B. **Automatic Open Burning Ban.** Whenever the National Weather Services has declared that the Fire Danger Index in Marshall County to be very high or extreme, there is an automatic ban for all Open Burning within Marshall County. The automatic ban on Open Burning shall automatically be suspended once the Fire Danger Index in Marshall County falls below the very high category.

- a. The website currently used by Marshall County to determine Fire Danger Index is the following: <https://www.weather.gov/unr/rfd>. This website may be updated by resolution if the website used to determine the Fire Danger Index changes.
- C. **Commissioners “Fire Danger Emergency” Declaration.** In addition to the Automatic Open Burning Ban above, the Marshall County Commissioners may, when weather or other conditions which may make Open Burning of any substance unduly hazardous and danger to public safety, declare a “Fire Danger Emergency”. If a “Fire Danger Emergency” is declared, all open burning of any substance shall be prohibited within any or all of the unincorporated area of Marshall County until such time as the resolution declaring the “Fire Danger Emergency” shall have been rescinded by appropriate action of the Marshall County Board of Commissioners.

#### SECTION III **PENALTY AND REMEDY:**

- A. **Penalty.** The penalty for each violation of this ordinance shall be a Class 2 Misdemeanor. (SDCL 7-18A-2 and SDCL 22-6-2(2)).
- B. **Fire Suppression Cost.** Any violation of this ordinance is subject to the suppression costs of extinguishing the fire. (SDCL 5-4-17)
- C. **No Prohibition Of Remedies.** Nothing herein shall be construed to prohibit or supersede any civil remedy otherwise available to any person or entity.
- D. **Duty of Care.** 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 the fire.

#### SECTION IV **SEVERABILITY**

- A. **Severability.** If any provision of this ordinance shall be held invalid, it shall not affect any other provision 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.

#### SECTION V **IMMEDIACY AND ORDANCE REVOCATION:**

- A. **Immediacy.** This Ordinance is declared to be necessary for the immediate preservation of public safety and pursuant to SDCL § 7-18A-8, shall be in full effect immediately upon passage.
- B. **Ordinance 26 Revoked:** Once this ordinance takes full effect, Marshall County Ordinance Number 26 is hereby REVOKED.
- C. **Permit Requirement Removed:** Once this ordinance takes full effect, Marshall County will be issuing no more permits for Open Burning.

**First Reading : June 22, 2021**

**Second Reading: July 13, 2021**

**Adopted June 22, 2021**