WHEREAS, it is a lawful purpose of the board of County Commissioners of the County of Roberts, to enact ordinances to protect and promote the general welfare, health, and safety of its citizens; and

WHEREAS, the board of County Commissioners of the County of Roberts may impose a ban to prohibit or restrict open burning in order to protect the public health and safety pursuant to South Dakota Codified Law § 7-8-20(18)

 NOW THEREFORE BE IT ORDAINED by the Board of County Commissioners of the County of Roberts:

 **SECTION 1: DEFINITIONS**

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 an open burning set forth herein. Fireworks which produce sparks are specifically included in the definition of open burning. 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.

PERSON: Any individual, partnership, firm, association, municipality, public or private corporation, state, tribe, nation, political subdivision, trust, estate, or any other legal entity, including any officer or governing or managing body thereof.

 **SECTION 2: AUTHORITY TO DECLARE FIRE DANGER EMERGENCY**

1. In the interest of public health and safety, no person shall conduct open burning outside of a municipality in Roberts County when the National Weather Service has declared the South Dakota Grassland Fire Danger Index to be in the VERY HIGH or EXTREME category or has issued a RED FLAG WARNING for any portion of Roberts County. The prohibition against open burning shall automatically be suspended during any period the South Dakota Grassland Fire Danger Index falls below the VERY HIGH category or the RED FLAG WARNING has been rescinded or cancelled by the National Weather Service.
2. Independent of the South Dakota Grassland Fire Danger Index or a RED FLAG WARNING being issued, the Roberts County Board of County Commissioners hereby delegates their authority to the Roberts County Emergency Manager (a.k.a Roberts County Civil Defense) to declare a “fire danger emergency.” If a “fire danger emergency” be declared, all open burning of any substance shall be prohibited within any or all of the unincorporated areas of Roberts County until such time as the Roberts County Emergency Manager (a.k.a Roberts County Civil Defense) declares that the “fire danger emergency” is over.
3. Any person who shall create, commit, maintain, or permit to be created, committed, or maintained an open burning in violation of a prohibition based on the South Dakota Grassland Fire Danger Index, a RED FLAG WARNING, or the declaration of a “fire danger emergency” shall be deemed to have committed the offense of Unlawful Burning in violation of the ordinance and would be subject to all criminal and civil penalties provided for herein.

 **SECTION 3: EXEMPTIONS**

Other than when deemed necessary by fire officials for the preservation of life and/or property, exemptions may not be granted during the conditions identified in Section 2.

 **SECTION 4: REPORT OF CONTROLLED BURNING REQUIRED**

1. During times when there is not a RED FLAG WARNING or the South Dakota Grassland Fire Danger Index is not in the VERY HIGH or EXTREME categories, open burning is allowed if the person committing, creating, maintaining, or permitting a controlled burn notifies the Roberts County Sheriff’s Office Dispatch Center that the controlled burn will be taking place. This notification may be done by telephone to the Dispatch Center and should include the location of the fire, when it will occur, and what is being burned. The person committing, creating, maintaining, or permitting a controlled burn shall also notify the Roberts County Sheriff’s Office Dispatch Center when the controlled burn has concluded. This notification does not apply to small fires in burning barrels or small fires of trash, leaves, branches, or campfires.
2. Any person who shall create, commit, maintain, or permit to be created, committed, or maintained an open burning without notifying the Roberts County Sheriff’s Office Dispatch Center prior to the beginning of the burning or at the conclusion of the burning shall be deemed in violation of this ordinance and subject to all criminal and civil penalties provided herein.

**SECTION 5: PENALTY AND REMEDY**

 Violations of this ordinance shall be subject to penalties pursuant to South Dakota Codified Law § 7-18A-2.

 **SECTION 6: SEVERABILITY**

If any provision of this ordinance shall be held invalid, it shall not affect any other provisions 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 7: SUPREMACY**

All ordinances or parts thereof in conflict herewith are hereby repealed. This ordinance repeals and replaces Ordinance 2021-28.

Dated this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2023 at Sisseton, South Dakota.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tom Vergeldt, Commissioner Chairman

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ATTEST:

Kristi Fritz, Roberts County Auditor