



## MEMO

TO: Cass County Commission

FROM: Jim Prochniak, Cass County Emergency Manager

DATE: May 10, 2023

SUBJECT: Cass County Ordinance #2005-3

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The North Dakota Legislature passed HB 1053 which modifies burn ban verbiage to burn restrictions, the wording is the only modification as the penalty stays the same.

A request to update Cass County Ordinance #2005-3 is being made to reflect the new language.

As indicated in your notes, today would be the first reading to consider the ordinance amendments with second reading and adoption scheduled for June 15<sup>th</sup>, 2023.

**Suggested motion:** Move to consider first reading with noted amendments to Cass County Ordinance #2005-3 changing wording from burn ban to burn restrictions accurately reflecting passage of North Dakota HB 1053.

### Attachments:

1. North Dakota HB 1053

**Sixty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1053  
(Political Subdivisions Committee)  
(At the request of the Adjutant General)

AN ACT to amend and reenact section 37-17.1-10.1 of the North Dakota Century Code, relating to burn restrictions.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 37-17.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-10.1. Burn ~~ban~~restrictions - Penalty.**

An order or proclamation under section 37-17.1-10 which includes a ~~ban~~restriction on open burning may provide for a penalty for a violation of the ~~ban~~restriction through a citation, a criminal complaint, or an information through the district court in the county in which the offense occurred. An individual who willfully violates a burning ~~ban~~restriction established by a local order or proclamation under this section is guilty of a class B misdemeanor.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1053.

House Vote:    Yeas 92            Nays 1            Absent 1

Senate Vote:    Yeas 45            Nays 0            Absent 2

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2023.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2023,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

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SUBJECT: ORDINANCE #2005-3 AMENDED (OPEN BURNING BAN-RESTRICTION)

ADOPTED DATE: JUNE 15, 2023

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CASS COUNTY  
OPEN BURNING BAN  
RESTRICTION  
AMENDED ORDINANCE #2005-3

Section 1

GENERAL PROVISIONS

- 1.1 The purpose of this Ordinance is to promote and enhance the public health, safety, comfort, and the general welfare of Cass County, North Dakota; and to provide for a countywide ~~ban~~ of open fires when local fire officials in Cass County determine conditions to be unsafe for open fires.
- 1.2 In the interpretation and application of this Ordinance, all provisions shall be liberally construed in favor of the governing body and deemed neither to limit, supersede, or contravene any other North Dakota state statute or regulation regarding open burning, including, but not limited to, Chapter 23-29 (Solid Waste Management and Land Protection Act) and 37-17.1 (North Dakota Disaster Act) of the North Dakota Century Code and Chapter 33-15-04 (Open Burning Restrictions) of the North Dakota Administrative Code.

Section 2

DEFINITIONS

- 2.1 Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application.
- 2.2 An “open burning ban-restriction” means no person shall initiate, cause, conduct, or permit open fires.
- 2.3 An “open fire” means those types of permissible burning specifically authorized under Subsection 1 of Section 33-15-04-02 of the North Dakota Administrative Code; except for (1) fires in open containers not less than 15 feet from a structure and (2) ceremonial fires with a total fuel area of 3 feet or less in diameter and 2 feet or less in height.

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- 2.4 “Willfully” means a person engages in the conduct intentionally, knowingly, or recklessly. A person engages in conduct:
- A. “Intentionally” if, when he engages in the conduct, it is his purpose to do so.
  - B. “Knowingly” if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.
  - C. “Recklessly” if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in Section 12.1-04-02 of the North Dakota Century Code, awareness of the risk is not required where its absence is due to self-induced intoxication.

Negligent conduct does not constitute willful conduct for the purpose of this Ordinance.

### Section 3

#### AUTHORIZATION FOR OPEN BURN BAN

- 3.1 The Chair of the Commission may declare a ~~ban~~-restriction on open burning for a period not to exceed seven (7) days.
- 3.2 Open burning ~~bans~~-restrictions may be continued or renewed for a period in excess of seven days with the consent of the Commission.
- 3.3 Any order or proclamation declaring an open burning ~~ban~~-restriction must be given prompt and general publicity and must be filed with the county auditor.
- 3.4 In determining whether to declare a ~~ban~~ restriction on open burning the Chair of the Commission and the Commissioners should consider the following factors:
  - A. The Rangeland Fire Danger Index issued by the National Weather Service.
  - B. Red Flag Warnings issued by the National Weather Service.
  - C. The fire response capabilities of local fire departments.
  - D. Information provided by the North Dakota Fire Service and the State Fire Marshall’s Office.
  - E. Information provided by the County Emergency Manager.

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- F. Information provided by local fire department officials.
  - G. Information provided by local law enforcement officials.
  - H. The public health, safety, comfort and general welfare of the county.
- 3.5 Open burning ~~ban~~ **restrictions** should be rescinded when fire danger conditions have improved or when previously diminished fire response capabilities have been restored.

#### Section 4

#### NOTIFICATION OF OPEN FIRES

- 4.1 A person shall notify the Red River Regional Dispatch Center prior to initiating, causing, conducting, or permitting open fires in Cass County.

#### Section 5

#### PENALTIES

- 5.1 A willful violation of this ordinance shall be a Class B Misdemeanor.

#### Section 6

#### SEVERABILITY CLAUSE

- 6.1 Should any section, provision or part of this Ordinance be adjudged invalid or unconstitutional, such adjudication should not affect the validity of the Ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

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APPROVED:

ss/Chad M. Peterson  
Chad M. Peterson, Chairman  
Board of Commissioners of the  
County of Cass

ATTEST:

ss/Brandy Madrigga  
Brandy Madrigga  
County Finance Director

First reading: 05/05/2023  
Second reading: 06/15/2023  
Final Passage: 06/15/2023  
Publication: 05/17/2023

(SEAL)

HISTORICAL REFERENCE DATE: JULY 18, 2005  
June 17, 2013

NOTICE OF PROPOSED AMENDMENT TO  
CASS COUNTY ORDINANCE

The Cass County Board of Commissioners is considering amendments to an ordinance relating to open burning regulations. The first reading of the ordinance was held May 15, 2023. The second reading and adoption is scheduled for June 15, 2023, at the meeting of the Cass County Board of Commissioners beginning at 3:30 PM in the Commission Room at the Cass County Courthouse in Fargo, North Dakota.

PUBLISH IN LEGAL ADVERTISING: May 17, 2023