

ORDINANCE NO. 2026-06

AN ORDINANCE OF CLAY COUNTY, SOUTH DAKOTA, AUTHORIZING THE DECLARATION OF FIRE DANGER EMERGENCIES AND REGULATING OPEN BURNING THROUGHOUT UNINCORPORATED CLAY COUNTY.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CLAY COUNTY, SOUTH DAKOTA:

Section 1. Purpose. The Clay County Board of County Commissioners, which shall be referred to as the Board of Commissioners, is charged with protecting the health, safety, and welfare of the citizens of Clay County and all property situated therein.

Pursuant to SDCL 7-8-20(18), the Board of Commissioners is authorized to declare Fire Danger Emergencies and prohibit Open Burning within Clay County, after consultation with local fire officials and law enforcement officials, to protect the public health, safety, and welfare.

Section 2. Definitions. For purposes of this ordinance:

Adult Burner. A person eighteen (18) years of age or older who ignites, authorizes, or causes a fire.

Burn Barrel. A metal container used to hold combustible or flammable waste materials so that they can be ignited for the purpose of disposal. Burn Barrels must be equipped with a metal cover or grate having openings no larger than one and one-quarter (1 ¼) inches and located at least fifteen-feet (15') from any combustible materials.

Cooking Appliance. A portable or permanently installed appliance manufactured and intended solely for the preparation of food by means of contained combustion or electric heating, including gas grills, charcoal grills, pellet grills, smokers, and similar enclosed cooking devices.

Fire Danger Emergency. A condition during which Open Burning and certain other fires are restricted or prohibited due to elevated fire danger. A Fire Danger Emergency may be established by the issuance of a Fire Weather Watch or Red Flag Warning by the National Weather Service (NWS) or by declaration of a Local Fire Danger Emergency.

Open Burn or Open Burning. The outdoor burning of combustible materials, including but not limited to the burning of crop residue, grass, vegetation, brush, ditches, fields, roads, fence rows, wildlands, trash, debris, or other natural or manufactured materials.

Outdoor Fireplace. A manufactured outdoor appliance constructed of non-combustible materials, with a maximum fuel area of three (3) feet, equipped with a screen (having openings no larger than one and one-quarter (1 ¼) inches), chimney, or other device placed above the fuel area, fueled by cut or split wood, and located at least fifteen feet (15') from any combustible materials.

Public Notice. Notice provided to the public by reasonable means, including the Clay County website, radio, emergency notification systems, or other electronic or print communication.

Recreational and Personal Use Fire. A fire used for personal enjoyment, warmth, ceremonial purposes, or similar non-commercial purposes, including fires contained in fire pits, Outdoor Fireplaces, campground fire rings, or similar outdoor fire devices.

Section 3. Fire Danger Emergencies.

A. NWS Fire Danger Emergency.

A Fire Danger Emergency shall automatically take effect throughout unincorporated Clay County whenever the NWS issues a Fire Weather Watch or Red Flag Warning affecting Clay County. The Fire Danger Emergency shall remain in effect until the NWS cancels, expires, or terminates the Fire Weather Watch or Red Flag Warning.

B. Local Fire Danger Emergency.

The Clay County Office of Emergency Management or the Board of Commissioners may declare a Local Fire Danger Emergency for the protection of the public health, safety, and welfare, regardless of whether a Fire Weather Watch or Red Flag Warning has been issued.

A declaration by the Board of Commissioners shall require a majority vote of the members present.

Any Local Fire Danger Emergency shall:

1. Take effect immediately upon Public Notice;
2. Remain in effect for no more than ten (10) consecutive days, unless extended by the Board of Commissioners; and
3. Be subject to rescission at any time by the declaring authority or by the Board of Commissioners.

Section 4. Burning Regulations.

A. Cooking Appliances.

The use of Cooking Appliances shall be permitted at all times, including during a Fire Danger Emergency, and does not require notification to the Clay County Communications Center.

B. Activities Allowed without Notification When a Fire Danger Emergency is Not in Effect.

When a Fire Danger Emergency is not in effect, fires in Burn Barrells, Outdoor Fireplaces, and Recreational and Personal Use Fires are permitted without notification to the Clay County Communications Center.

C. Open Burning Requiring Notification.

When a Fire Danger Emergency is not in effect, Open Burning may only occur after the Adult Burner notifies the Clay County Communications Center by calling 605-677-7100 prior to ignition.

The Adult Burner shall provide their name, address, telephone number, burn location, and material to be burned.

D. Prohibited Burning During Fire Danger Emergency.

During a Fire Danger Emergency, no person shall conduct Open Burning or use Burn Barrels, Outdoor Fireplaces, or Recreational and Personal Use Fires throughout unincorporated Clay County.

The Board of Commissioners may, by Resolution, exempt specific activities, locations, or facilities from a Fire Danger Emergency when the Board of Commissioners determines the exemption can be made safely.

Section 5. Responsibility.

The Adult Burner remains responsible for compliance with this ordinance, including any escaped fire, unauthorized burning, or failure to comply with notification requirements.

A person under eighteen (18) years of age who ignites or causes a fire without the permission or authority of an Adult Burner is subject to enforcement under this ordinance.

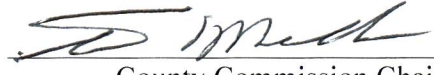
Section 6. Penalties. Any person who violates this ordinance shall be subject to a fine of fifty-four dollars (\$54.00), plus applicable court costs as established by the First Judicial Circuit of South Dakota. A citation issued under this ordinance may be resolved by payment of the fine and costs without a mandatory court appearance. No jail sentence shall be imposed for a violation of this ordinance.

In addition to any fine, any person responsible for a fire in violation of this ordinance may be liable for all fire suppression costs, response costs, mutual aid expenses, governmental reimbursement obligations, and firefighter compensation recoverable under South Dakota law, including SDCL 34-35-12.

Section 7. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 8. Authority. This ordinance supersedes and repeals Clay County Ordinance No. 2022-07 and any other ordinance regarding the creation of a fire ban, burn ban, Fire Danger Emergency, or any ordinance in conflict with this ordinance.

Adopted by majority vote of the Clay County Board of Commissioners in regular session this
25th day of August, 2026.


County Commission Chairman

Attest:



(seal)

Carri R. Crum
County Auditor



First Reading: August 18, 2026

Second Reading:

Adoption:

Publication Date:

Effective Date: