

KEARNS METRO TOWNSHIP COUNCIL
ORDINANCE # 2021-06-04
June 29, 2021

**AN ORDINANCE OF THE KEARNS METRO TOWNSHIP COUNCIL ENACTING AN
EMERGENCY BAN ON THE USE OF FIREWORKS WITHIN THE BOUNDARIES OF
KEARNS METRO TOWNSHIP**

BE IT KNOWN AND REMEMBERED THAT, the Kearns Metro Township (“**Kearns**”) Council (the “**Council**”) met in a special public meeting on June 29, 2021.

WITNESS

WHEREAS, Governor Spencer J. Cox has issued Executive Orders 2021-07, 2021-10, and 2021-13 declaring a state of emergency and requiring increased water conservation due to extreme drought conditions for the State of Utah; and

WHEREAS, on June 23, 2021, the Fire Marshal for the Unified Fire Authority (“**UFA**”) determined (**Attachment A**) that “hazardous environmental conditions exist that may necessitate the controlled use of ignition sources throughout the UFA’s geographical footprint,” and recommended that Kearns and UFA’s other member entities “evaluate the restrictions of ignition sources, including fireworks, and potentially prohibit their use in any area your legislative bodies determine [to] met the criteria provided for in Utah Code §15A-5-202.5(1)(b)(1) and (2) (i.e. mountainous, brush-covered, forest-covered, dry grass-covered, trails, canyons, ravines, wildland interface);” and

WHEREAS, the Fire Marshal further found that “along the Wasatch Front, the energy release component of vegetation may be near maximum potential” and that “[w]ater conservation measures, while necessary, may contribute to even drier vegetation conditions around and within residential neighborhoods, such as the drying out of bushes, trees, and grasses [which] will increase the fire potential during this firework season even in areas not traditionally covered by fireworks bans” (emphasis added); and

WHEREAS, on June 25, 2021, the Salt Lake Valley Fire Chiefs issued a statement (**Attachment B**) urging citizens to forego the use of personal fireworks over the upcoming July 4th and July 24th holiday celebrations, finding: “[w]ith the current extreme drought conditions, we have real concerns that our personnel will be inundated with fireworks-related incidences...[e]ven in areas where fireworks are allowed, there are extreme risks of fire;” and

WHEREAS, Utah Code Ann. § 10-8-47(1)(c) authorizes the Council to “regulate and prevent...fireworks...or any other dangerous or combustible materials” within Kearns in accordance with Utah Code Ann. §§ 53-7-225 and §15A-5-202.5; and

WHEREAS, Utah Code Ann. §15A-5-202.5(b)(1) and (2) further provide that when the fire marshal determines that “existing...hazardous conditions necessitate controlled use of any ignition source, including fireworks, lighters, matches, sky lanterns, and smoking materials...the legislative body of a municipality may prohibit the ignition or use of an ignition source” in certain areas, including “brush-covered” and “dry grass-covered” areas (*see*, **Attachment C**); and

WHEREAS, Utah Code Ann. § 15A-5-202.5(1)(b)(1.3) further provides that “if the existing...hazardous environmental conditions exist in a metro township...the metro township legislative body may prohibit the ignition of an ignition source in all or part of the areas described in paragraph 1.1 [i.e., the existing hazardous areas] that are within the township” (emphasis added); and

WHEREAS, Utah Code Ann. § 15A-5-202.5(1)(b)(2.3) states that while the boundaries of a designated area closed to fireworks must align as close as practical to the hazardous area, “the closed area may include areas outside of the hazardous area to facilitate a readily identifiable line;” and

WHEREAS, pursuant to the Fire Marshal’s recommendation, the Council finds that water providers for Kearns have instructed residents to only water twice a week at 20 minutes intervals, under the mantra “Drought ’21 Watering to Survive not Thrive,” meaning that grass-covered lawns located on residential properties, meetinghouses, schoolhouses, public parks and spaces, trails, and similar areas throughout all of Kearns are much drier and more combustible than they would be in a normal year; and

WHEREAS, this concern is heightened by the fact that, due to Kearns’ small size of only 4.5 square miles and its disproportionately large number of parks, schools, and other open grassy areas, all of Kearns is in close proximity to large dry grass covered areas, including but not limited to Kearns Oquirrh Park Fitness Center, Lodestone Park, the Kearns High School, Thomas Jefferson Jr. High School, Kearns Junior High School, Thomas W. Bacchus Elementary School, Western Hills Elementary School, Beehive Elementary School, West Kearns Elementary School, Oquirrh Hills Elementary School, Lodestone Park, David Gourley Park, Bruce Field Park, Mountain Man Park, South Park, Impressions Park, Loder Park, the Oquirrh Baseball Fields, the Kearns Skate Park, and the Hayes Conservation Garden, among others; and

WHEREAS, the Council also finds that there are a number of large unattended and unirrigated parcels with substantial amounts of brush or dry grass-covered areas throughout Kearns that present dangerous conditions relating to fire danger, including, for example: large, unattended parcels along the Union Pacific railroad corridor that bisects Kearns, the northern power utility corridor, various undeveloped grassy parcels, and Camp Kearns, among others; and

WHEREAS, consistent with the Fire Marshal’s findings, the Council also finds that unprecedented drought, high temperatures, and low humidity represent an additional factor that has created uniquely dry grass, brush, and vegetation throughout Kearns, which have caused extremely hazardous existing conditions, impacting the combustibility of trees, grasses, and the like and creating a high likelihood of ignition by a spark or flame from a firework or open fires; and

WHEREAS, pursuant to the above, the Council finds that dry brush-covered areas and dry grass covered areas in Kearns are combustible due to these extraordinary drought conditions, meaning that a single spark could ignite dry grass, brush, and other vegetation in these areas and quickly become a large fire involving multiple homes and businesses; and

WHEREAS, the Council finds that pursuant to Utah Code Ann. § 15A-5-202.5(1)(b)(2.2) that the boundaries of the restricted areas identified in the map prepared by UFA attached as

Attachment D (the “**Map**”) are “as close as is practical to the defined hazardous area” and/or are necessary to facilitate a readily identifiable and enforceable line; and

WHEREAS, the Council finds that the minimal restriction on public convenience which would occur through a restriction on the use of personal fireworks and open fires within the areas designated in the Map is significantly outweighed by the need to protect public health and safety and to take precautions to guard against the existing extraordinary fire danger; and

WHEREAS, a restriction on the use of personal fireworks within the areas designated in the Map complies with the requirements of Utah Code Ann. §15A-5-202.5(b)(2) because it only restricts fireworks around defined hazardous areas due to existing conditions, designates the restricted areas along readily identifiable features, ensures that the boundaries of the designated restricted areas are as close as is practical to the defined hazardous area, and identifies the restricted areas through a map readily available to the public.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF KEARNS METRO TOWNSHIP AS FOLLOWS:

Section 1. Definitions. For the purposes of this Ordinance:

1. The term “firework” will be defined pursuant to Utah Code Ann. § 53-7-202(14), which includes:
 - a. “Class C explosives,”
 - b. Class C common state-approved explosives” (i.e., “a firework that is purchased at retail for use by a consumer that is not a Class C dangerous explosive”); and
 - c. “Class C dangerous explosives” as defined in Utah Code Ann. § 53-7-202, which includes but is not limited to:
 - i. A firecracker, cannon cracker, ground salute, M-80, cherry bomb, or other similar explosive;
 - ii. A skyrocket, missile type rocket, a single shot or reloadable aerial shell, aerial salute, flash shell, comet, mine, a cake containing more than 500 grams of pyrotechnic composition, or similar rocket; and
 - iii. A bottle rocket, roman candle, a rocket mounted on a wire or stick; or a device containing any of the foregoing.
2. The term “firework” will not include Class A explosives, Class B explosives, and exempt explosives, with the term “exempt explosives” meaning a model rocket, toy pistol cap, emergency signal flare, snake or flow worm, party popper, trick noisemaking, and match and wire sparker under 12 inches pursuant to Utah Code Ann. § 53-7-202(10) and (14).

3. The term “open fire” will mean a fire outside of a building that is not contained within a fire pit or other barrier, an outdoor fireplace, a stationary barbecue or grill, or an incinerator, excluding welding or acetylene or other torch with an open flame.

Section 2. Restriction on Fireworks and Open Fires. Pursuant to the provisions of Utah Code Ann. § 15A-5-202.5, and based on the above findings, the use of fireworks and open fires is hereby prohibited in the areas set forth in the Map, which is incorporated herein as the restriction area. This emergency restriction will remain in effect until 11:59 pm on November 1, 2021, unless earlier terminated by action of the Council of Kearns Metro Township. This restriction will not apply to permitted public fireworks displays authorized by Kearns and approved by Kearns’ fire code official nor will it apply to the sale of fireworks.

Section 3. Penalty. Initial violations of this Ordinance will constitute an infraction with subsequent violations constituting a Class B misdemeanor, punishable in accordance with the Utah Code and the Kearns Metro Township Code.

Section 4. Severability. If any section, part, or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability will not affect any other portion of this Ordinance, and all sections, parts, and provisions of this Ordinance will be severable.

Section 5. Conflicts. If any provision of this Ordinance conflicts with another ordinance, policy, or provision, within the Kearns Metro Township Code, this Ordinance will control.

Section 6. Distribution. Kearns Metro Township staff are directed to provide a copy of this ordinance to Salt Lake County, the Unified Fire Authority, and any other applicable official(s). The Kearns Metro Township Recorder is further directed to publish and/or post this Ordinance forthwith in accordance with Utah Code Ann. § 10-3-711(1) and Utah Code Ann. § 10-3-712. Staff are also directed to post this Ordinance and the Map to the Kearns Metro Township Webpage.

Section 7. Effective Date. For the protection and preservation of public health and safety, this Ordinance will take effect immediately upon its passage.

[execution on following page]

APPROVED AND ADOPTED this 29th day of June, 2021 in Salt Lake County, Utah.

KEARNS METRO TOWNSHIP COUNCIL

By: Kelly F. Bush, Mayor
Kelly Bush, Mayor

ATTEST

APPROVED AS TO FORM:

Sherrie Swensen
Sherrie Swensen, Clerk/Recorder

Nathan S. Brack
Nathan Bracken,
Metro Township Attorney

VOTING

Council Member Bush voting	Yea
Council Member Butterfield voting	Yea
Council Member Peterson voting	----
Council Member Schaeffer voting	Yea
Council Member Snow voting	Yea

(Complete as applicable)

Summary of ordinance published in newspaper: _____

Date of publication: _____

Effective date of ordinance: _____

**SUMMARY OF
KEARNS METRO TOWNSHIP ORDINANCE NO. 2021-06-04**

On June 29, 2021, the Kearns Metro Township Council enacted Ordinance No 2021-06-04, enacting a fireworks ban. A complete copy of this ordinance is available in the office of the Kearns Metro Township Clerk, located at 2001 South State Street, N2-700, Salt Lake City, Utah.

KEARNS METRO TOWNSHIP COUNCIL

By: Kelly F. Bush, Mayor
Kelly Bush, Mayor

ATTEST

Sherrie Swensen
Sherrie Swensen, Clerk/Recorder

APPROVED AS TO FORM:

Nathan S. Bracken
Nathan Bracken,
Metro Township Attorney

VOTING

Council Member Bush voting	Yea
Council Member Butterfield voting	Yea
Council Member Peterson voting	---
Council Member Schaeffer voting	Yea
Council Member Snow voting	Yea

Attachment A

Fire Marshal Determination



June 23, 2021

To: UFA Members

I have been asked to update guidance as to the currently existing environmental conditions that are in effect as they may impact your legislative bodies' evaluation of additional fireworks restrictions beyond those created based upon historical conditions.

Conditions since the last memo have deteriorated and have significantly deteriorated in 2021 compared to years past. The US Drought Monitor continues to show most of Salt Lake County in the D-4, Exceptional Drought category and we are clearly following the historic dry line and explosive potential. A June 22nd report from the National Fire Interagency Center shows Energy Release components surrounding the Salt Lake Valley to be in the 90th to 97th percentile. This means that along the Wasatch Front, the energy release component of vegetation may be near maximum potential and the fuel moisture well below average. Given the persistence of unusually high temperatures and low humidity, conditions continue to deteriorate and may become even drier as we approach the holidays.

Water conservation measures, while necessary, may contribute to even drier vegetation conditions around and within residential neighborhoods, such as the drying out of bushes, trees, and grasses. This will increase the fire potential during this fireworks season even in areas not traditionally covered by fireworks bans.

Given these reports, factors and conditions, I have determined, as the fire code official, that hazardous environmental conditions exist that may necessitate the controlled use of ignition sources throughout the UFA's geographical footprint. We also recognize that not all areas in the valley meet the criteria specified in the statute. I recommend that your entity evaluate the restrictions of ignition sources, including fireworks, and potentially prohibit their use in any area your legislative bodies determine meet the criteria provided for in Utah Code §15A-5-202.5(1)(b)(1) and (2) (i.e. mountainous, brush-covered, forest-covered, dry grass-covered, trails, canyons, ravines, wildland interface).

We will continue to monitor conditions and provide updates as needed.

Please feel free to contact our office should you have any questions.

Brad Larson

Fire Marshal / Unified Fire Authority

4965 S Redwood Rd / Taylorsville, UT 84123

801-743-7227 o / 801- 205-4080 c

blarson@unifiedfire.org

Attachment B

Salt Lake Valley Fire Chiefs Statement

FOR IMMEDIATE RELEASE
June 25, 2021

Contact: Nile Easton
801-971-0640

SALT LAKE VALLEY FIRE CHIEFS URGE CITIZENS TO SKIP PERSONAL FIREWORKS

Chiefs release video explaining extreme risk of fireworks-related fires

Salt Lake County, UT—The Salt Lake Valley Fire Chiefs joined together to release a video urging citizens to skip personal fireworks over the upcoming holiday celebrations, citing risks from extreme drought conditions.

The Chiefs are encouraging residents to celebrate by attending one of the many professional fireworks shows that being held locally.

“With the current extreme drought conditions, we have real concerns that our fire personnel will be inundated with fireworks-related incidences,” said Terry Addison, Chair of the Salt Lake Valley Fire Alliance and South Salt Lake Fire Chief. “Even in areas where fireworks are allowed, there are extreme risks of fires.

Emergency situations created by the use of personal fireworks are avoidable if residents choose to celebrate the holidays in other ways. The Salt Valley Chiefs are asking citizens to skip personal fireworks this year and allow local fire departments to focus on other emergency situations.

The video also encourages citizens to use the non-emergency dispatch numbers to report illegal fireworks. Please call 801-799-3000 for Sandy and Salt Lake City and 801-840-4000 for the rest of the valley. 911 should only be called to report fires or injuries.



Attachment C

UFA Legal Counsel Opinion



UNIFIED FIRE AUTHORITY

June 15, 2021

Fireworks Restrictions Per Utah Code Ann. 15A-5-202.5 Due to Currently Existing Conditions

UFA Board Members:

Due to the ongoing drought, and resulting extremely dry conditions and fire danger, the Board has requested my interpretation of the statutory framework that allows a municipality to further restrict the use of fireworks beyond the historical restrictions published in the County restriction map.

It is my opinion that the statutory framework (primarily located in [Utah Code 15A-5-202.5](#), a copy of which is attached) provides two mechanisms for a municipality to restrict ignition sources (including fireworks).

First, the legislative body of the municipality may restrict fireworks in areas that have “historical hazardous environmental conditions” in the following types of areas (found in Subsection 202.5(b)(1)):

- mountainous, brush-covered, forest-covered, or dry grass-covered areas;
- within 200 feet of waterways, trails, canyons, washes, ravines, or similar areas;
- the wildland urban interface area, which means the line, area, or zone where structures or other human development meet or intermingle with undeveloped wildland or land being used for an agricultural purpose; or
- a limited area outside the hazardous areas to facilitate a readily identifiable closed area.

In order to restrict fireworks using such historical data, the legislative body must follow a process of determining that the conditions existed two of the previous five years in the delineated areas and provide a map of the boundaries of the restricted areas to the County prior to May 1st for publication by June 1st of each year. This method, found in Subsection 202.5(b)(3), has been typically used by municipalities since this framework was created in 2018 and thought by many to be the extent to which fireworks could be restricted. For 2021, that process has already occurred and the map has been published at <https://ufa.maps.arcgis.com/apps/webappviewer/index.html?id=9a3a18142cde47f5a817b68f76df1ed7>.

It is my opinion that there is a second process established by the statute that provides a municipal legislative body the authority to restrict fireworks at any time based on a finding that “existing conditions” merit the restriction of fireworks in designated areas.

The process for doing so is found in Subsection 202.5(b)(2) and requires that the legislative body:

- designate the closed area along readily identifiable features like major roadways, waterways, or geographic features;
- ensure that the boundary of the designated closed area is as close as is practical to the defined hazardous area, provided that the closed area may include areas outside of the hazardous area to facilitate a readily identifiable line; and
- identify the closed area through a written description or map that is readily available to the public.

There is no requirement that this be done prior to May 1st since it is based upon existing conditions rather than historical conditions. It is important to note that the restrictions made due to a finding related to existing conditions using this method are still limited in scope to those areas identified in Subsection 202.5(b)(1), i.e. mountainous, brush-covered, forest-covered, or dry grass-covered areas, wildland urban interface, etc.

However, due to the currently extreme conditions I believe that a legislative body may determine that more areas within a municipality may qualify to be included in those definitions than may have been included historically. The UFA Board reached a consensus this morning that additional fireworks restrictions east of 1300 East would likely qualify under this standard based upon the factual information about currently existing conditions provided by the UFA Fire Marshal. The Board discussed that existing restrictions made in other UFA areas were likely sufficient for now. This Board consensus is advisory only. Each legislative body must make its own determination and pass a resolution or ordinance enacting the restrictions per the statute. Such a restriction may be more or less expansive depending upon the determinations made by individual municipalities and Councils. Any resolution enacting such restrictions would need to make a finding regarding the currently existing conditions and meet the requirements of 202.5(b).

I recommend that if a Board Member is interested in pursuing additional fireworks restrictions in their municipality that they share this memo with their municipal attorney as it is the individual municipalities that will be taking the legislative action to enact additional restrictions. If your counsel has any questions or concerns they can certainly contact me to discuss.

Time is short given the upcoming season. I, the UFA Fire Marshal, and your UFA liaisons are all available and willing to assist municipalities with any factual or other assistance we can provide to help facilitate any Council action. Please contact us or have your attorney or staff reach out for any reason.

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Brad Larson
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Attachment D

Restricted Areas for
Fireworks and Open Fires

Find address or place

