

**AN ORDINANCE FOR THE PROTECTION OF SOIL AND WATER FROM  
WILD, FREE ROAMING or DOMESTIC BISON GRAZING  
IN McCONE CONSERVATION DISTRICT**

**Section 1. FINDING, POLICY AND INTENT.**

- 1) It is the finding of the McCone Conservation District that due to the migratory behavior to search out desirable grazing forage, the social behaviors, and other bison behaviors, bison grazing can create lasting impacts to soil and water resources.
- 2) Pursuant to 76-15-102 it is the declared policy of this state to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.
- 3) It is the policy of the McCone Conservation District to provide for the conservation of the soil and water resources of the district and the prevention of soil erosion, accelerated soil erosion and the prevention of sediment damage to the land, water and other resources within this conservation district.
- 4) It is McCone Conservation District's intent, in furtherance of the policy of the state of Montana and of McCone Conservation District, to protect the soil and water resources within the boundaries of the conservation district from unreasonable depletion and degradation of natural resources from the grazing of wild, free roaming and domesticated bison.
- 5) It is McCone Conservation District's intent that all wild, free roaming and domesticated bison be healthy subject to a disease testing plan and certification that the bison are disease free and brucellosis free.

**Section 2. PURPOSE.** It is the purpose of this ordinance to:

- 1) enact a soil conservation and erosion prevention program for the conservation and protection of land, water, and other resources of the McCone Conservation District from the grazing of wild, free roaming and domesticated bison;
- 2) encourage the use of land in accordance with its capabilities and treat it according to its needs;
- 3) prevent the degradation of rangelands, cultivated lands, waterways, drainages, reservoirs and lakes;
- 4) protect the tax base;
- 5) protect and promote the health, safety and general welfare of the people; and
- 6) ensure that soil resources are preserved for the production of food and fiber for the present and future generations of this district.

**Section 3. AUTHORITY.**

- 1) Pursuant to 76-15-702, McCone Conservation District has the authority to formulate regulations governing the use of lands within its boundaries in the interest of conserving soil and water resources and preventing and controlling erosion.
- 2) In pertinent part, McCone Conservation District is authorized to adopt regulations that include any means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control erosion in this district.



**Section 4. DEFINITIONS.** Unless the context requires otherwise, in this ordinance, the following definitions apply:

- 1) "Bison" means bison that are wild, free-roaming or domestic.
- 2) "Conservation plan" means the plan developed by the landowner and approved by the board of supervisors which describes the suitability of the land for its intended uses and the measures required to prevent, to the extent possible, erosion from occurring on the land for which the plan is developed.
- 3) "District" or "conservation district" means the McCone Conservation District, a governmental subdivision of the state of Montana and a public body, corporate and politic, exercising public powers.
- 4) "Erosion" means the process by which the surface layer of the land is worn away by the action of water, wind, gravity, or a combination thereof.
- 5) "Land occupier" means any person, firm, corporation, municipality, or other legal entity who holds title to, or is in possession of, any lands lying within the district, whether as owner, lessee, renter, tenant, or otherwise the occupier of land. Where the term land occupier is used in this ordinance, the term shall include both the owner and the occupier of the land when they are not the same person.
- 6) "Person" means any natural person, individual, corporation, firm, partnership, association, municipality, governmental agency, political subdivision, or other legal entity.
- 7) "Qualified elector" means an individual qualified to vote under state law residing within McCone Conservation District.
- 8) "Sediment" means the solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice, and has come to rest on the earth's surface.
- 9) "Sediment damage" means the economic or physical damage caused to any person's property or natural resource resulting from erosion.
- 10) "Sedimentation" means the process or action of depositing sediment into a waterway.
- 11) "Supervisors" or "district supervisors" means the McCone Conservation District board of supervisors.
- 12) "Water" means any and all surface water and groundwater which are contained within, flow through, or border upon the McCone Conservation District.

**Section 5. APPLICABILITY.** This ordinance applies only to bison grazing on lands within the conservation district.

#### **Section 6. COMPLIANCE WITH ORDINANCE.**

- 1) No land occupier or person may cause or conduct, contract for, or authorize any bison grazing activity without a permit from the McCone Conservation District.
- 2) Bison grazing of all land within the district shall be carried out under a conservation plan developed under Section 7.
- 3) No lands may be grazed by bison if:
  - a) the lands do not have sustainable or suitable habitat/forage for bison;
  - b) the lands do not have an adequate and sustainable water supply, or an approved plan to provide an adequate and sustainable water supply for the maximum number of bison to be grazed on the land; or
  - c) the grazing will result in sediment damage to lands, drainages, waterways, reservoirs, and other water storage facilities.

#### **Section 7. CONSERVATION PLANS.**



- 1) Management practices that meet or exceed the USDA Natural Resource and Conservation Service technical guides for McCone County in existence at the time a permit is applied for is the standard for conservation planning. The land occupier's conservation plan must address wind erosion, water erosion, the protection of grass waterways, the proper grazing rates, and any other management practices which protect the land and water resources from degradation.
- 2) The conservation plan must include the management, techniques, and methods for control of accelerated erosion and sediment damage resulting from the activities of grazing bison.
- 3) If no applicable USDA technical guidelines are available, the applicant must demonstrate to the supervisors the chosen conservation plan is appropriate and consistent with the policy and purpose of this ordinance.
- 4) The current USDA electronic field office technical guide shall be available for public inspection during normal office hours at the conservation district office located in Circle, Montana.

#### **Section 8. WILD, FREE ROAMING OR DOMESTIC BISON GRAZING PERMIT.**

- 1) A land occupier planning to graze bison on lands within the district shall submit to the supervisors a completed application on a form provided by the district that meets the requirements of Section 7 and Section 9.
- 2) The application must include:
  - a) a description of the lands upon which the bison grazing is proposed;
  - b) the number of acres proposed to be grazed by bison;
  - c) the maximum number of animal units and bull/cow ratio;
  - d) the location of all watering facilities and a watering management plan;
  - e) a health and disease testing plan and certification that the bison are disease free and brucellosis free;
  - f) the location and type of bison fence proposed to keep the bison from leaving the proposed grazing land; and
  - g) a conservation plan as described in Section 7.

#### **Section 9. PROCESSING PERMIT APPLICATIONS.**

- 1) Within 10 days after acceptance of a correct and complete permit application, the supervisors shall set a date for a meeting on the application.
- 2) The meeting must be open to the public.
- 3) The applicant may appear at the meeting and provide information in support of the permit application. Other persons may appear at the meeting and provide information in support of or in opposition to the permit application.
- 4) The supervisors shall issue a decision on the permit application within 15 working days of the meeting.
- 5) The supervisors may extend, upon the request of a supervisor or an applicant, the time limits in this section when, in their determination, the time provided is not sufficient to carry out the purposes of this section.
- 6) A majority vote of the supervisors is necessary to approve a permit application. In order to approve an application, supervisors must determine that:
  - a) the proposed grazing lands have sustainable or suitable habitat/forage for the maximum number of bison to be grazed;
  - b) a conservation plan has been developed that meets or exceeds USDA, Natural Resource and Conservation Service technical guides and approved by the district;
  - c) the applicant's application demonstrates that the proposed plan appropriately protects soil and water resources;
  - d) an adequate health and disease testing plan has been developed.:



- e) certification has been given that the bison are disease free and brucellosis free; and
- f) an adequate fencing plan has been developed to keep the bison from leaving the proposed grazing land.
- g) Has adequate water storage facilities or surface water.

## **Section 10. COMPLAINTS.**

- 1) A complaint signed by a land occupier may be filed against any other land occupier or person alleging that bison are grazing on lands within the district in violation of this ordinance.
- 2) The complaint must:
  - a) include the name and address of the complainant;
  - b) be in writing, signed, and delivered to the district office;
  - c) include and location of the alleged violation;
  - d) include the date of the alleged violation, if known;
  - e) describe the source, nature and extent of any erosion or sediment damage that is alleged to have occurred or that is occurring; and
  - f) describe whether degradation of the lands has occurred or is occurring.
- 3) The complaint is a public record that is maintained in the district office.

## **Section 11. ACTION ON A COMPLAINT.**

- 1) Within 5 working days of the receipt of a correct and complete complaint the supervisors shall notify the alleged violator of the complaint.
- 2) The supervisors shall set a date to conduct an onsite inspection within 10 working days of receipt of the correct and complete complaint to determine whether an actual violation exists. The alleged violator, or a designated representative, may participate in the onsite inspection.
- 3) At the onsite inspection, the supervisors shall acquire all of the following information:
  - a) the location of and estimated amount of acreage involved in the alleged violation;
  - b) the description of the source, nature and extent of any type of erosion or sediment damage;
  - c) identification of the type of land involved, including, but not limited, to rangelands, croplands, water ways/drainages, riparian areas, reservoirs, creeks and dams;
  - d) the type of fencing, if any, being used to control the bison;
  - e) whether a conservation plan is in place and is being implemented;
  - f) the number of animal units and bull/cow ratio grazing on the land;
  - g) whether adequate water supply is available;
  - h) whether a health and disease testing plan is in place and being implemented;
  - i) whether there is certification that the bison are disease free and brucellosis free.
- 4) Based upon the subsection (3) information the supervisor shall determine whether there is a violation of this ordinance. The alleged violator and the complainant must be notified of the supervisors' determination within 5 working days of their determination. If there is a violation the violator must be given a violation notice by certified mail. The supervisors shall include with the violation notice the corrective actions necessary to resolve the violation.
  - a) If the supervisors determine that the degradation of the land or waters is occurring, the violation notice must include an order requiring the cessation of degradation of the land.
  - b) If degradation of the land continues after an order to cease has been issued the supervisors may petition the district court under 76-15-709 for the enforcement of the ordinance and for such other temporary relief as may be necessary.



- c) If the violator ceases the degradation of the land pursuant to the supervisors' order or if the violation does not involve the degradation of land, the supervisors, or their designated representative, shall meet with the violator within 5 working days of the notice of violation to:
  - i) discuss solutions to resolve the corrective actions identified in the violation order; and
  - ii) specify a reasonable length of time to complete any corrective measures identified in the agreed to solution.
    - (a) A meeting under this subsection may be continued from time to time in order to reach an agreed to solution.
- 5) If the violator and the supervisors do not agree to a solution, within 10 working days of the conclusion of the meeting, the supervisors shall notify the violator of the corrective actions necessary to resolve the violation. The violator is not entitled to any further meeting under Section 12.
- 6) The supervisors may extend the time periods in this section as they deem necessary.

#### **Section 12. REVIEW OF SUPERVISORS' DETERMINATION.**

- 1) A person determined to be in violation and who disagrees with the supervisors' determination and who is issued an order to cease under Section 11 (4)(b) from further activity may request in writing a meeting with the supervisors. The request must be made within 5 working days of receipt of the violation notice. The supervisors shall hold a meeting with the violator to review the information set forth in Section 11 (3).
- 2) A person determined to be in violation and who disagrees with the supervisors' determination under Section 11 (4)(a) may request in writing a meeting with the supervisors. The request must be made within 5 working days of receipt of the violation notice. The supervisors shall hold a meeting with the violator at a regular monthly meeting of the supervisors. The meeting must be a review of the information set forth in Section 11 (3).
- 3) Within 10 working days of a meeting held under this section, the supervisors shall notify the person determined to be in violation of the ordinance by certified mail of the result of the supervisors' review under subsection (1) or (2) and the remedy to be implemented by the violator.
- 4) A person who does not comply with a remedy determined by the supervisors under Section 11 or this Section shall be subject to enforcement pursuant to Section 15.
- 5) The supervisors may extend the time periods in this section as they deem necessary.

#### **Section 13. BOARD OF ADJUSTMENT.**

- 1) A board of adjustment shall exist to hear and determine matters filed pursuant to 76-15-723 through 76-15-725.
- 2) The board of adjustments shall be structured as set forth in 76-15-721 through 76-15-722.
  - (a) The board of adjustment shall be made up of three members, each to be appointed for a term of three years, except that the members first appointed shall be appointed for terms of one, two, and three years, respectively.
  - (b) The members of the board of adjustment shall be appointed by the administrator of the conservation and resource development division of the department of natural resources and conservation with the advice and approval of the district supervisors.
  - (c) All meetings of the board of adjustment shall be open to the public and its records and proceedings shall be public.

#### **Section 14. BOARD OF ADJUSTMENT--PETITION FOR VARIANCE.**



- 1) A petition may be filed for a variance with the board of adjustment as provided in 76-15-723, alleging that there are great practical difficulties or unnecessary hardships in complying with the land use regulations prescribed by the ordinance.
- 2) Any qualified elector, person or land occupier against whom a complaint has been filed may petition the board of adjustment for a variance as provided in subsection (1). The petition must be filed with a written notice to the supervisors that the person or land occupier does not contest the violation. If the variance is not granted, the person or land occupier shall correct the violation pursuant to the corrective action determined by the supervisors under the provisions of Section 11.
- 3) An order of the board of adjustment may be appealed to district court pursuant to 76-15-726.

#### **Section 15. ENFORCEMENT IN DISTRICT COURT.**

- 1) The supervisors may bring enforcement actions in district court as provided in 76-15-709 against any person failing to comply with the ordinance and any corrective action or order issued by the supervisors.
- 2) The supervisors may seek an enforcement order requiring the removal of bison, against any person whose bison grazing practices are degrading lands which results in accelerated erosion, sediment damage, or damage to waterways, drainages, reservoirs or lakes.

#### **Section 16. COMPLIANCE WITH OTHER LAWS.**

Nothing in the ordinance shall be construed as exempting a person from the requirements of other local, state or federal laws. To the extent that the requirements of the ordinance conflict with any applicable local, state or federal requirements, the local, state, or federal requirements shall apply.

#### **Section 17. LIABILITY.**

- 1) The McCone Conservation District, conservation district supervisors, and conservation district employees are immune from suit for any liability that might otherwise be incurred or imposed for an act or omission committed while engaged in conservation district activities under the ordinance as more fully set forth in 76-15-320.
- 2) No person or land occupier acting in compliance with the ordinance is relieved of liability for damage to any person or property as the result of the person's or land occupier's negligent acts or omissions.

#### **Section 18. ALTERATION OR REPEAL OF ORDINANCE.**

The ordinance may only be amended, supplemented or repealed by the filing of a petition as provided in 76-15-705. Referenda on the adoption, amendment, supplementation, or repeal of any part of the ordinance shall not be held more often than once in six (6) months.

#### **Section 19. SEVERABILITY CLAUSE.**

If a part of this ordinance is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this ordinance is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.