

BEFORE THE BOARD OF COMMISSIONERS
OF OURAY COUNTY, COLORADO

Ordinance No. 01-01

AN ORDINANCE ESTABLISHING AND IMPLEMENTING A RIGHT TO FARM AND
RANCH POLICY PURSUANT TO C.R.S. § 35-3.5-101

WHEREAS, the Board of County Commissioners ("the Board") recognizes that the changing nature of land use and demography in Ouray County has increased the incidence of conflicts between agricultural operators and visitors to and residents of rural Ouray County, and has begun to threaten the economic viability of agricultural operations; and

WHEREAS, it is desirable to educate the public and non-agricultural residents and visitors to Ouray County about the existence, validity, and importance of the County's agricultural operations and activities as integral and necessary elements for the continued vitality of the County's history, economy, landscape, lifestyle and culture; and

WHEREAS, in order to protect the County's benefits derived from agricultural operations, landowners, residents and visitors must be prepared to temper their urban sensitivities and accept the activities, sights, sounds and smells of rural Ouray County, and should be aware of some of the potential conflicts from agricultural and rural living, including, but not limited to: harassment of livestock and livestock losses due to free roaming dogs; trespass by livestock; livestock and machinery on highway and County roads; leaving gates open; fence construction and maintenance; chemical applications; maintenance of ditches across private property; storm water and runoff management; gravel roads; burning of ditches and the resultant smoke; noise, dust and odor from agricultural operations that occur day or night; disposal of dead animals; weeds and pest control, including application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides; flies, mosquitoes and the presence of insects; and trespass; and

WHEREAS, the Board finds that it is desirable to protect agricultural operators from complaints against legal and reasonable agricultural operations and activities; and

WHEREAS, open space and working landscapes associated with farming and ranching are important parts of the scenic beauty of Ouray County with intrinsic and incalculable value in hay meadows, bird and wildlife habitat, grazing cattle and horses, corrals and ranch buildings, and working ranch hands; for many these attributes are not only a reason to live in Ouray County, but, more importantly, they are means to a living in Ouray County; and

WHEREAS, the Board recognizes that agricultural operations, growth and development are dynamic processes, and that this Right to Farm and Ranch Policy will need continual analysis and perhaps revision and modification; and

WHEREAS, it is desirable that the Board provide a mandatory forum for a speedy, informal and non-binding resolution of disputes involving nuisance actions and agricultural operators¹ in Ouray County; and

WHEREAS, pursuant to this ordinance the Board shall attempt and aspire to:

- A) Conserve, enhance, and encourage ranching, farming, and all manner of agricultural activities and operations within and throughout Ouray County where appropriate;
- B) Minimize potential conflicts between agricultural and nonagricultural users of land in the County;
- C) Educate new rural residents and long-time agricultural operators alike as to their rights, responsibilities, and obligations relating to agricultural activities and living in rural Ouray County; and
- D) Integrate planning efforts to provide for the retention of traditional and important agricultural lands in agricultural production while also allowing for reasonable residential and other development; and

WHEREAS, the Board, pursuant to C.R.S. § 30-11-107(1)(bb), has the power to provide for the preservation of cultural, historic, and architectural history within the County; and

WHEREAS, the Board, pursuant to C.R.S. § 30-28-115(1), has the power to foster the state's agricultural and other industries within the County; and

WHEREAS, the Board, pursuant to C.R.S. § 29-20-104(1)(c), (g) & (h), has the authority to plan for and regulate the use of land by preserving areas of historical importance, regulating the use of land on the basis of its impact on the community or surrounding areas, and otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights; and

WHEREAS, pursuant to C.R.S. § 35-3.5-101, Colorado is a "Right to Farm" State with a declared policy to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products; and further that the general assembly recognizes that when nonagricultural land uses extend into agricultural areas, as is the case in Ouray County, agricultural operations may be forced to cease operations and many others are discouraged from making investments in farm improvements; and that it is the purpose of Colorado law to reduce the loss to the State of Colorado of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance provided the agricultural operation employs methods or practices that are commonly or reasonably associated with agricultural production; and

¹ "Agricultural Operation or Activity", means individuals and entities are engaged in the science and art of production of plants and animals useful to man, including, to a variable extent, the preparation of these products for man's use and their disposal by marketing or otherwise, and includes horticulture, floriculture, viticulture, dairy, livestock, poultry, bee and any and all forms of farm products and farm production.

WHEREAS, the Board has determined that it is desirable and beneficial to the citizens of Ouray County to establish and adopt by ordinance a Right to Farm and Ranch Policy involving the elements of protection of agricultural operations, education of property owners and the public along with a plain, speedy and adequate remedy to resolve agricultural disputes; and

WHEREAS, the establishment and adoption of such a Right to Farm and Ranch Policy would serve and promote the public health, safety, and welfare of the citizens of Ouray County.

NOW, THEREFORE, BE IT ORDAINED, by the Board of County Commissioners of Ouray County, Colorado that:

1) Policy Statement. It is the policy of the Board of County Commissioners of Ouray County, as set forth herein that: Ranching, farming, and all manner of agricultural activities and operations, employing methods or practices that are commonly or reasonably associated with agricultural production within and throughout Ouray County, are integral elements of and necessary for the continued vitality of the County's history, economy, landscape, open space, lifestyle, and culture. Given their importance to Ouray County, the Western Slope of Colorado, and the entire State, agricultural lands and operations in Ouray County are worthy of recognition and protection.

a) Colorado is a "Right to Farm" State pursuant to C.R.S. § 35-3.5-101. Landowners, residents and visitors must be prepared to temper their urban sensitivities and accept the activities, sights, sounds, and smells of rural Ouray County as a normal and necessary aspect of living in a County with a strong rural character and a healthy agricultural sector. Those with an urban sensitivity may perceive such activities, sights, sounds, and smells only as inconvenience, eyesore, noise, and odor. However, State law and Ouray County policy provide that ranching, farming, or other agricultural activities and operations within the County shall not be considered to be nuisances so long as the agricultural activities and operations employ methods or practices that are commonly or reasonably associated with agricultural production. In addition, an agricultural operation shall not be found to be a public or private nuisance if such agricultural operation was established prior to the commencement of the use of the area surrounding such agricultural operation for nonagricultural activities. Therefore, all must be prepared to encounter any one or more of the following, which may naturally occur as a part of reasonable agricultural operations: noises, odors and lights from agricultural operations at all hours of the day and night; gravel roads with mud and dust; fence construction and maintenance; maintenance of ditches across private property, including the burning of those ditches and resultant smoke, the cleaning of ditches and the clearing of vegetation and natural material from ditches; machinery and livestock on public roads; storage and disposal of manure and dead animals; weed and pest control, including application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides; flies, mosquitoes and the presence of insects.

b) In addition, all owners of land, whether Agricultural Business, Farm, Ranch or Residence, have obligations under State law and County regulation with regard to the maintenance of fences and irrigation ditches, controlling weeds, keeping livestock and

pets under control, using property in accordance with zoning, and other aspects of using and maintaining property. Specifically, Colorado is an “open range” state with a fence law that requires landowners to fence out livestock if they want protection from livestock. Irrigators have the right to maintain irrigation ditches through established easements that transport water for their use, and landowners across whose land ditches run are not permitted to take appropriated water or obstruct the flow of water without specific water rights. Said irrigation ditches are not to be used for the dumping of refuse by anyone. Landowners are responsible and financially liable for controlling weeds, keeping pets under control, using property in accordance with zoning, and wise maintenance of resources of the property (water, soil, animals, plants, air, and human resources). Simply put, there are many rights and responsibilities, as well as potential hardships, that come with living and owning land in Ouray County; residents and landowners are encouraged to learn about these rights and responsibilities and act as good neighbors and citizens of the County.

2) Intent of this Policy. It is not the intent of this policy to require agricultural or ranch land to be “open space” by locking farm and ranchland into their existing use so that the public can continue to enjoy the scenic qualities of Ouray County. Rather, this policy is practical, and is designed so that individual working farms or ranches desiring to continue their existing operations should receive some support from the County. This Right to Farm and Ranch Policy is designed to achieve that objective.

3) Establishment of an Agricultural Review Board. Pursuant to Ouray County’s authority, delegated from the State of Colorado, under C.R.S. § 35-3.5-102(7) to provide additional protection for agricultural operations, the Board hereby finds that a dispute resolution procedure entitled the “Ouray County Agricultural Review Board” (“ARB”) will provide additional protection for agricultural operations in Ouray County against nuisance lawsuits. It is hereby acknowledged by Ouray County that ARB review is just one of several possible steps in a comprehensive Ouray County effort to protect agricultural operations from the pressures of growth, development as well as nuisance lawsuits.

a) The ARB is hereby composed of three (3) members appointed by the Board of County Commissioners of Ouray County, Colorado who shall serve a term of two years, except that one member of the initial ARB shall be appointed for a one year term only so as to stagger the terms of the ARB. All ARB members shall be residents of Ouray County with preference and priority given to ARB candidates with experience in ranching or farming, a history of living in Ouray County and a demonstrated commitment to the Ouray County community. Members of the ARB shall receive no compensation, but may receive reasonable expenses incurred in the carrying out of their duties, and the County shall make reasonable staff time and other in kind resources available as needed and requested by the ARB. All Members of the ARB shall serve at the pleasure of the Board of County Commissioners of Ouray County.

b) The ARB is designed to be a mandatory, speedy and informal resolution to any and all nuisance conflicts that may arise between landowners or residents relating to agricultural operations or activities in Ouray County. Pursuant to the authority granted in

the Colorado Right-to-Farm law, Ouray County hereby requires that before a lawsuit regarding nuisance agricultural operations or activities in Ouray County may be brought in either Colorado District or County Court the parties must bring their concerns and issues before the ARB for review. The ARB shall hear from the parties themselves in an informal fashion that will not include an attorney, unless such attorney is on the ARB, a party directly involved with the issues and not representing a client or the presence of the attorney is expressly agreed to by the ARB and the parties involved. Discussion among the parties and the ARB is intended to be frank and, therefore, all proceedings shall be confidential, and no ARB member or other county staff shall distribute or disclose any information discovered or revealed in the course of any ARB meeting, absent consent by the parties. However, all statements made during the ARB meeting may be admissible in a subsequent court proceeding.

c) After hearing from the parties, the ARB shall make a determination on the issue of whether the questioned agricultural activity is a nuisance under the standard of whether the agricultural activity is one that is reasonable or commonly used in agricultural operations in Ouray County. If the ARB determines that the agricultural activity employs methods or practices that are commonly or reasonably associated with agricultural production in Ouray County then the Board shall make a finding that they believe no nuisance exists. In addition, the ARB shall deliver advice to the parties to remedy the controversy. Following the ARB determination, an aggrieved party may then bring their lawsuit in Colorado District or County Court. The Court of Law may use the ARB finding to determine if a preliminary injunction should be issued in the case or if, as Ouray County would prefer, the agricultural activity should be allowed to continue until the completion of the adjudication process. The ARB discussion and determination will not bind either party unless the parties by mutual written agreement, executed either before or after the ARB determination, specifically agree that they will be bound by the decision of the ARB wherein the ARB decision shall be final. It shall be a valid defense for Ouray County agricultural operations involved in a nuisance lawsuit to plead that the parties did not complete an ARB hearing.

4) Public Education and Information Campaign. The Board, with the primary assistance of the ARB, The Tri-River Cooperative Extension of Colorado State University in Montrose, and through the use of County Staff as needed, shall support efforts to educate and inform the public of the Right to Farm and Ranch Policy. Such efforts may include dissemination of written information and oral presentations to community associations and organizations and schools; creation of signs for roadways in Ouray County; preparation and distribution of press releases relating to the County Right to Farm and Ranch Policy; sponsoring tours and other events as well as other similar activities.

5) Property Owner Notification. The Board may notify the owners of land within the County of the Ouray County Right to Farm and Ranch Policy by the following means:

a) A copy of said Policy Statement may accompany the tax notices mailed to record owners of all real property in Ouray County for the 2001 tax year or any other tax year;

b) Whenever a building permit is issued for new construction in the unincorporated area of Ouray County, the Land Use and Planning Department may provide a copy of this Policy Statement;

c) The Board may initiate amendments to the County subdivision regulations to provide that notification of the Policy Statement shall be made at the time of any subdivision or related land use approval and a note to that effect shall appear on any Plat outside municipalities' growth areas so approved;

d) In addition, the Board hereby requires title companies and real estate brokers operating in Ouray County to disclose the Right to Farm and Ranch Policy to purchasers of real property in the County. To that effect, the Board shall schedule presentations to the Board of Realtors and other professional organizations in Ouray County to explain and distribute copies of the policy.

6) Intergovernmental Agreements. Ouray County may amend and develop new intergovernmental agreements with the cities, towns and other governmental agencies in Ouray County to ensure that this ordinance is effective in all agricultural areas within the limits of Ouray County.

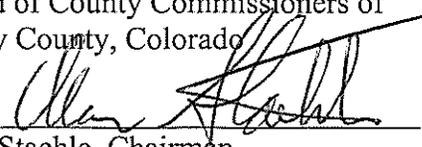
7) Hazards of Rural Living. Landowners, residents and visitors to Ouray County need to be aware that children and adults are exposed to different hazards in a rural setting that may not be present in an urban or suburban setting. Farm equipment, ponds and irrigation ditches, electrical power for pumps or other irrigation purposes and electric fences, traffic, use of agricultural chemicals, weeds, territorial farm dogs, and livestock present real threats to both children and adults. Controlling children's activities is important, not only for their safety, but also to protect the livelihood of farmers and ranchers. Open irrigation waters are essential to agriculture and ranching and have legal right of ways that must not be obstructed. At the same time, irrigation ditches and waters present a very real and inherently dangerous hazard to all landowners, residents and visitors to Ouray County. Furthermore, open ditch operations often result in seepage and spills of runoff and storm waters in unpredictable locations and times. Again, living in and visiting Ouray County is a wonderful experience, but it demands flexibility, respect and knowledge of this rural community.

INTRODUCED, READ AND ORDERED PUBLISHED on the 18th day of June 2001.

PUBLISHED in the Ouray Plaindealer on the 9th day of July 2001.

ADOPTED, APPROVED, AND ORDERED PUBLISHED AS ADOPTED the 23rd day of July 2001.

Board of County Commissioners of
Ouray County, Colorado

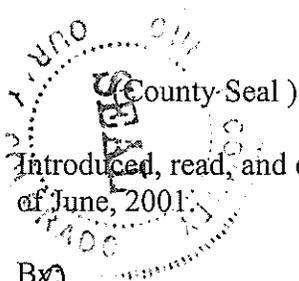
By: 
Alan Staehle, Chairman

Clerk's Certification:

I, Michelle Olin, Clerk & Recorder of Ouray County, Colorado, do hereby attest and certify the Ordinance set forth above was introduced, read and ordered published at a regular meeting of the Board of County Commissioners of Ouray County, Colorado, on the 18th day of June, 2001. The Ordinance was then published in the Ouray County Plaindealer on the 9th day of July, 2001. It was thereafter passed at a regular meeting of the Board of County Commissioners of Ouray County, Colorado, on the 23rd day of July, 2001 and published in the Ouray County Plaindealer, ~~by title only, but setting forth the full text of any amendments,~~ on the 27th day of July, 2001. *in its entirety with amendments*

Michelle Olin

Judy Wolford



(County Seal)

Introduced, read, and ordered published by the Board of County Commissioners on the 18th day of June, 2001.

By:

Judy Wolford
Judy Wolford
Clerk to the Board of County Commissioners