

Ordinance No. 22-01

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GILPIN

ORDINANCE CONCERNING THE RESTRICTION OF OPEN FIRES, CONTAINED OPEN FIRES, FIREWORKS, PUBLIC DISPLAYS OF FIREWORKS, AND USE OF COMBUSTIBLE DEVICES

**WHEREAS**, pursuant to C.R.S. §30-15-401, the Board of County Commissioners of the County of Gilpin, Colorado has the power to adopt ordinances for control of those matters of local concern; and

**WHEREAS**, pursuant to C.R.S. §§30-15-401(1)(n.5) and (n.7), matters of local concern include a ban on open fires which includes any activity that produces or maintains, or attempts to produce or maintain, spark, flame, or any common or known ignition sources for open fires, and which may include a prohibition on the use and sale of fireworks, when the danger of forest or grass fires is found to be high; and

**WHEREAS**, the Board of County Commissioners of the County of Gilpin recognize that fire conditions can and do exist year-round now due to changes in the climate. Consequently, in the spring, summer, fall, and winter fire restrictions or bans may be warranted on an expedited basis if high fire danger exists; and

**WHEREAS**, fire restrictions or bans must be based on competent evidence per C.R.S. §30-15-401(1)(n.5)(I). Currently, the Gilpin County Sheriff and the Sheriff's Department investigate, research and gather the competent evidence needed to determine what, if any, fire restriction or ban is necessary to protect and preserve the peace, health, safety, and welfare of Gilpin County; and

**WHEREAS**, the Board may delegate the Board's power to issue fire restrictions or bans to the Gilpin County Sheriff or other qualified individuals by resolution approved by the Board and may also subsequently revoke any such delegated power or authority; and

**WHEREAS**, it is the opinion of the Board of County Commissioners of the County of Gilpin that in order to preserve the public peace, health, safety, and welfare of the residents and visitors of Gilpin County, this Ordinance is necessary; and

**WHEREAS**, this Ordinance supersedes any prior ordinance, resolution, or decision by the Board on the issues of fire restrictions or bans and other matters addressed herein.

**NOW THEREFORE**, the Board of County Commissioners of the County of Gilpin ordain this Ordinance No. 22-01 to be a local law of Gilpin County to deter and prevent fires that would violate this Ordinance and thereby protect the peace, health, safety, and welfare of Gilpin County, its residents, and visitors in accordance with the following restrictions, prohibitions, requirements, conditions, and procedures set forth below:

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## **SECTION 1. DECLARATION OF FIRE RESTRICTIONS OR OPEN FIRE BAN**

- 1.1. At any regularly scheduled or special meeting of the Board of County Commissioners, the Board may, by resolution, impose restrictions or ban upon any or all types of open fires, open burning, the sale, use or possession of fireworks, and/or the use of combustible devices in the unincorporated territory of Gilpin County, or any defined portions thereof. The Board may delegate the Board's power to issue fire restrictions or bans to the Gilpin County Sheriff or other qualified individuals by resolution approved by the Board and may also subsequently revoke any such delegated power or authority. Any delegation of the Board's authority to the Sheriff or other qualified individuals in a Board resolution that is still in effect, including without limitation resolutions adopted prior to this Ordinance, shall remain in effect unless subsequently revoked by the Board.
  
- 1.2. Such resolution shall be based upon a danger of wildfires within the areas where the danger of forest or grass fires is found to be high by competent evidence which may include:
  - 1.2.1. The recommendation of the Gilpin County Sheriff or any fire chief of a fire agency within Gilpin County;
  - 1.2.2. Any similar prohibition imposed under the authority of the Governor of the State of Colorado;
  - 1.2.3. Any recommendation, or similar prohibitions, from the Division of Fire Prevention and Control, Nation Parks Service, United States Forest Service, or other agency of the State or Federal Government;
  - 1.2.4. The recommendation of any municipality within Gilpin County;
  - 1.2.5. The recommendation of similar prohibition of any county adjacent to Gilpin County;
  - 1.2.6. The use of the national fire danger rating system, predictions of future fire danger such as those issued by the national interagency coordination center or any successor entity, localized evidence of low fuel moisture content, and any other similar indices or information; or
  - 1.2.7. Any testimony or exhibits establishing that, due to weather, weather forecasts, wind, or condition of forest, grass, or other vegetation, the likelihood of a wildfire is high.



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- 1.3. Notice of such resolution may be given by best means available including, press release, online notice via the Gilpin County website, individual notification to any agency requesting or advising in favor of the prohibition, individual notification to law enforcement agencies or such other means as the Board deems appropriate under the circumstances.
  
- 1.4. Any such resolution shall state which of the following are subject to the restrictions or prohibition:
  - 1.4.1. Open fires (both contained and uncontained open fires);
  - 1.4.2. Gas or liquid fueled fires;
  - 1.4.3. Sale and/or use of fireworks;
  - 1.4.4. Possession of fireworks;
  - 1.4.5. Public firework displays;
  - 1.4.6. Combustible devices; and
  - 1.4.7. Smoking
  
- 1.5. Any resolution which prohibits or restricts open fires, uncontained fires, gas or liquid fueled fires, or contained open fires, may authorize the Sheriff and Fire Authority to exempt from such restrictions or prohibition any of the aforementioned given that it is approved in advance by the Sheriff or Fire Authority, after inspection of the containment structure, surrounding vegetation, and potential fire fuel, and the immediate availability of fire suppression apparatus.

**SECTION 2. APPLICATION.** This Ordinance shall apply throughout the unincorporated areas of Gilpin County, including private property, public and state land, and within any incorporated town or city which elects by ordinance or resolution to have the provisions thereof apply.

**SECTION 3. UNLAWFUL ACT.** It shall be unlawful for any person to violate a Fire Restriction/Ban issued under this Ordinance or unpermitted open burn within the unincorporated areas of Gilpin County, including private property, public and state lands, and within any incorporated town or city which elects by ordinance or resolution to have the provision thereof apply.

**SECTION 4. ENFORCEMENT**

- 4.1. Any person who knowingly, recklessly, or carelessly violates a Fire Restriction/Ban issued under this ordinance commits a civil infraction violation under C.R.S. §§30-15-401 and 402 *et seq.* and a crime – a class 2 misdemeanor under C.R.S. §18-9-117 and upon a finding thereof, shall be punishable by a fine of one thousand dollars (\$1,000.00) for offenses and for each subsequent separate offense or the maximum fine allowed per statute.
  
- 4.2. In addition to the penalty prescribed by this Ordinance, persons convicted of a



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violation of this Ordinance are subject to a surcharge for ten dollars (\$10.00). This surcharge shall be paid to the Clerk of Court by the Defendant. Each Clerk shall transmit the moneys to the Court Administrator of the judicial district in which the offense occurred for credit to the victims and witnesses' assistance and law enforcement fund established in that judicial district pursuant to C.R.S §24-4.2-103. Any other fees required by statute shall be assessed in addition.

4.3. When imposing a fine under this Ordinance, the court shall separately state, as a part of the total fine, the surcharge specified in C.R.S. §24-4.2-104(1). The surcharge and fine shall not exceed the maximum allowed by Section 4(a) of this Ordinance. The Defendant shall also pay court costs and docket fees.

4.4. Additionally, any person violating a Gilpin County fire restriction or ban would be subject to additional prosecution and civil action by the County, other governmental entities, businesses, and any other entities and persons impacted. The consequences for the violator would include significantly greater civil fines and criminal penalties (up to \$1,000,000.00), criminal charges and having a criminal record, significant jail time (up to 48 years), and being liable for and required to pay restitution for the damages or costs suffered or incurred by any person or entity impacted by the violation and/or ensuing fire including without limitation for death, personal injuries, property damage, and costs and expenses in fighting the fire (each of these damages or costs alone could greatly exceed \$1,000,000.00 for each day of the fire).

**SECTION 5. PROCEDURE.** All prosecutions for all offenses under this Ordinance shall be by the District Attorney according to the Colorado Rules of Civil Infractions unless a criminal offense is also alleged, in which event the Colorado Rules of Criminal Procedure apply to the commencement of the action.

**SECTION 6. VALIDITY.** If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of County Commissioners hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

**SECTION 7. INTERPRETATION.** This Ordinance shall be so interpreted and construed as to effectuate its general purpose to reduce the danger of wildfires.

**SECTION 8. CERTIFICATION.** The Gilpin County Clerk and Recorder shall certify as to the passage of this Ordinance and make not less than three (3) copies of the adopted Ordinance available for inspection by the public during regular business hours.

**SECTION 9. EFFECTIVE DATE.** As required by C.R.S. §30-15-405, the Gilpin County Board of County Commissioners determines that this Ordinance shall be effective immediately upon approval at second reading by the Board of County Commissioners. This effective date is necessary to the



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immediate preservation of the public health or safety from the imminent potential danger from wildfire.

**SECTION 10. THIS ORDINANCE IS THE CONTROLLING ORDINANCE.** Any prior fire ban ordinances inconsistent with this Gilpin County Ordinance 22-01 are hereby repealed.

Introduced and first read this 5th day of July, 2022, and ordered published in full in a newspaper of general circulation published in Gilpin County at least ten (10) days prior to final adoption.

Approved and adopted upon second reading by a vote of 2 to 1 this 2nd day of August, 2022.

ADOPTED this 2nd day of August, 2022, by a vote of 2 to 1.

BOARD OF COUNTY COMMISSIONERS  
OF GILPIN COUNTY

Sandy Hollingsworth  
Sandy Hollingsworth, Chair

**CERTIFICATION AND ATTESTATION OF THE COUNTY CLERK**

Sharon McCormick A.K.A. Sahari McCormick, Gilpin County Clerk and Recorder, hereby certifies and attests that the foregoing Ordinance was introduced and publication ordered by the Board of County Commissioners of the County of Gilpin on first reading on the 5th day of July, 2022 at a regularly scheduled meeting of the Board of the County Commissioners, and approved on second reading on the 2nd day of August, 2022, at a regularly scheduled meeting of the Board of County Commissioners, Gilpin County, Colorado and that said Ordinance was published in full in the Newspapers of Record at least ten (10) days prior to final adoption.

Sharon McCormick  
Sharon McCormick A.K.A. Sahari McCormick  
Gilpin County Clerk and Recorder