

**PARK COUNTY ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ADOPTING PARK COUNTY FIRE PERMIT, HIGH FIRE HAZARD AREAS, AND CONTROL REGULATIONS**

**1. Legislative Findings and Purpose.** The Board of Park County Commissioners (“Board”) finds that:

It is in the interest of Park County to preserve and protect property and persons from fire.

Changing weather conditions may increase the danger of uncontrolled fires. Given the limitations or potential unavailability of fire suppression resources public officials should have the power to restrict certain activities involving fire or the risk of fire.

The Park County Sheriff’s Office and rural fire district and fire service area personnel investigate numerous reports of fires placing a strain on valuable time and resources. Fires ignited during unfavorable burning conditions also create a burden on fire protection agencies as well as creating a civil and criminal liability for the individual igniting the fire.

A non-refundable permit fee of Seven Dollars (\$7.00) helps defray the costs of administering permits under this Ordinance. Such administration includes reviewing and acting on applications, implementing and enforcing the terms of Open Burning Permits and providing firefighter training. It is reasonable to change the fees by subsequent County resolution.

**2. Authority.** The Board has the authority to adopt ordinances pursuant to the procedures set forth in Title 7, Chapter 5, Part 1, MCA. The Board may establish controlled burning seasons and permit requirements for its respective jurisdiction or protection area pursuant to Section 7-33-2205, MCA. The Board also has authority and fire protection duties set forth in Section 7-33-2202, MCA. Rural fire districts and fire service area in Park County have the authority and obligation to protect against fire pursuant to Section 7-33-2105 and Section 7-33-2402, MCA. Finally, the County Commission can restrict activities in high fire hazard areas pursuant to Section 7-33-2212, MCA

**3. Penalty & Enforcement.** The penalty for certain violations of the regulations adopted under this ordinance and state law is a \$500 fine and 6 months imprisonment or both. The penalties for Open Burning Permit violations herein are authorized in Section 7-33-2206, MCA. In addition, other civil legal remedies are available pursuant to state law and this ordinance.

**4. Severability.** If any part of this Ordinance is unenforceable then the remainder shall be enforceable.

**5. Effective Date.** The Park County Clerk and Recorder shall post a copy of this Ordinance and make copies available to the public upon first reading and approval. This Ordinance shall take effect thirty (30) days after its second reading and approval which shall be not less than 12 days apart from the first reading as required by Section 7-5-103, MCA, and has been filed with the Clerk & Recorder as required by Section 7-5-105, MCA.

**6. Park County Fire Control Regulations Adopted.** This Ordinance hereby adopts the Park County Fire Control Regulations attached hereto and which are incorporated into this Ordinance by reference.

**7. Absolute Liability Finding.** This Ordinance has the legislative purpose to impose absolute liability for any conduct described. Pursuant to Section 45-2-104, MCA, any violation of this Ordinance or Regulations adopted thereunder is subject to absolute liability. A person may be guilty of an offense without having, as to each element of the offense, one of the mental states of knowingly, negligently or purposely.

**FIRST READING & APPROVAL**

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

BOARD OF PARK COUNTY COMMISSIONERS

\_\_\_\_\_  
Steve Caldwell  
Chairman

\_\_\_\_\_  
Bill Berg

\_\_\_\_\_  
Clint Tinsley

ATTEST

\_\_\_\_\_  
Maritza Reddington, Clerk and Recorder

**SECOND READING & APPROVAL**

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

BOARD OF PARK COUNTY COMMISSIONERS

Steve Caldwell  
Chairman

\_\_\_\_\_  
Bill Berg

\_\_\_\_\_  
Clint Tinsley

ATTEST

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Maritza Reddington, Clerk and Recorder

## **PARK COUNTY FIRE CONTROL REGULATIONS**

**Section 1. Definitions.** The following terms have the following meanings in these regulations:

“Board” means the Board of Park County Commissioners.

“Fire Chief” means a fire chief of a governmental fire agency organized under Title 7, Chapter 33, Montana Code Annotated with the powers and duties set forth in Section 7-33-2001, MCA. Fire Chief also means an agent or designee of a “Fire Chief.”

“Open Burning” means the ignition, setting or burning of any material directly in the open air including slash, land-clearing or debris burning fires. Open Burning does not include a Recreational Fire.

“Open Burning Season” is established from January 1 through December 31 of each year as the time when Open Burning can take place. September 1<sup>st</sup> through November 30<sup>th</sup> all burning must be checked with the Montana Department of Environmental Quality (“DEQ”) to make sure open burning is not closed due to air quality concerns. December 1<sup>st</sup> through February 29<sup>th</sup> a person burning south of Interstate 90 must also obtain a DEQ burn permit and permission to burn on the day of the burning. All persons burning north of Interstate 90 must notify DEQ. A Park County burn permit is required for all burns from January 1 through December 31.

“Permit” is a document issued by the County or any rural fire district or fire service area through its Fire Chief which provides permission to ignite or set a fire pursuant to these regulations. A Permit does not allow the ignition, setting or burning of materials prohibited by state or federal law.

“Permit Holder” means the person, firm or corporate entity to whom a Permit is issued or the individual person acting as its agent or designee.

“Recreational Fire” means a fire ignited, set or burning in a nonflammable structure measuring less than 48 inches and for which a reasonably prudent and suitable source of extinguishing the fire is available.

### **Section 2. Permits.**

A. A Permit is required for Open Burning during Open Burning Season.

B. A Permit will be valid for only one Open Burning Season.

C. Issuing Permits. Permits are issued and sold through sources approved by the Park County Fire Warden. Agencies may facilitate the purchase of a permit by electronic means, such as Montana Interactive, or in person for customers. Agencies allowing in person purchases shall be disclosed to the public.

D. Permit Fees. A Seven Dollar (\$7.00) administrative fee shall be assessed for each Permit sold. The fee covers all costs associated with the administration of the Park County Open Burn Program. The Park County Open Burning Program is One Hundred Percent (100%) supported by those who use the program.

E. Permit Acknowledgement of Duties. Applicants must acknowledge in writing that they have read, understand, and agree to the requirements of the Permit and these regulations. Such acknowledgment must include the applicant's obligation to follow state regulations and laws for burning not set forth in this regulation.

**Section 3. Open Burning Conditions.** The following conditions are imposed upon any Permit or Permit Holder:

A. DEQ Open Burning Season Limitation. During the months of September, October, and November of any Open Burning Season, a Permit Holder should contact the State of Montana, Department of Environmental Quality to determine if any State air quality restrictions are in place.

B. Notice. At least 30 minutes before Open Burning a Permit Holder must activate its Permit each day burning is planned by contacting phone numbers and electronic notification resources designated by the Park County Rural Fire Warden. The Permit Holder must identify location of the burning. If these notification resources change, the Park County Fire Warden shall provide reasonable notice of such change through the media and pursuant to Section 7-1-2121, MCA. Permit Holders are obligated to utilize all notification resources. During certain times of the year a person burning may also have to contact DEQ prior to burning.

C. Preparation. Before setting an Open Fire, a Permit Holder shall ensure that reasonably prudent and suitable sources of fire suppression equipment and personnel are present for fire control based on the conditions for the duration of the burn.

D. Safety Conditions. No fire shall be set if wind or weather conditions make it hazardous to burn. If wind or other weather conditions create a hazardous fire condition, the fire must be extinguished as quickly as possible.

E. Suspension of Permits. Permits may be suspended by any jurisdiction or protection area through its Fire Chief at any time when hazardous fire conditions exist in the area of Open Burning. Permit Holders shall extinguish fires upon request of the Park County Sheriff or any Fire Chief.

F. Only Daylight Burning. Open Burning shall take place between sunrise and sunset. A Permit Holder shall notify the local Fire Chief or the County Fire Warden (406-823-0823) if Open Burning is not completely extinguished by sunset.

G. Fire Control. A Permit Holder shall not leave the immediate area of Open Burning until the fire has been completely extinguished, with no remaining embers or smoke.

#### **Section 4. High Fire Hazard Areas and Fire Restrictions.**

A. Designation of Areas. Pursuant to §7-33-2212, MCA the Board designates the following Park County High Fire Hazard Areas in Park County, Montana. These areas shall not include areas under the jurisdiction of any municipality or state or federal agency.

1. Cooke City/Silver Gate Fire Hazard Area – All non-federal and state lands in the Cooke City/Silver Gate and Colter Pass.
2. Gardiner to North Boundary of Rural Fire District #1 Fire Hazard Area – All non-federal and state lands from Gardiner to the north boundary of Rural Fire District #1 at Mile Post 7 on Highway 89 North.
3. Shields Valley Fire Hazard Area – All non-federal and state lands north of Mile Post 7 on Highway 89 North.

B. Limitation of Activities. The Board, through resolution, may require any person, firm or corporate entity to limit specific operations or activities or adjust working hours to a less critical period of the day for operations or activities conducted in Park County High Fire Hazard Areas. Such requirements shall be based on conditions that are deemed not safe for such operations or activities due to weather, fire activity, resource availability or other relevant factors.

C. Burning, Operations and Activities Ban. The Board may additionally require any person, firm or corporate entity to cease any or all operations or activities including all burning activity in any Park County High Fire Hazard Areas including:

- a. Open Burning;
- b. Any fire hazard reduction agreement burns, pursuant to Title 76, Chapter 13, Part 4, Montana Code Annotated;
- c. Any Recreational Fires; or
- d. Any operations or activities.

The Board may lift any requirement of this section when weather, fire activity, resource availability or other relevant factors change mitigating fire risk.

#### **Section 5. Unlawful Activity.**

A. Criminal Enforcement. A person who ignites or sets a fire without a Permit is guilty of a misdemeanor. A Permit Holder who does not satisfy the Open Burning Conditions pursuant to Section 3 is guilty of a misdemeanor.

B. Additional Legal Remedies. The Board may take any civil legal action needed in order to enforce these regulations pursuant to Section 7-33-2212, MCA including actions for injunctive relief or obtain relief pursuant to Section 50-63-103, MCA.