

GALLATIN COUNTY ORDINANCE NO. 2021-_____

**EMERGENCY ORDINANCE AMENDING ORDINANCE NO. 2021-006 and
CONTINUING THE BURN BAN AND FIRE RESTRICTIONS IN GALLATIN COUNTY,
MONTANA**

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Section 1 – Purpose and Legislative Findings

The Board of Gallatin County Commissioners (“County Commission”) finds that:

- A. The County Commission can restrict activities in high fire hazard areas pursuant to § 7-33-2212, MCA and the Gallatin County Fire Control Regulations;
- B. The Fire Control Regulations authorize the County Commission to “require any person, firm or corporate entity to cease any or all operations or activities including all burning activity in any Gallatin County High Fire Hazard Areas,” including any Open Burning and any Recreational Fires;
- C. Section 1 of the Fire Control Regulations defines “Open Burning” as “the ignition, setting or burning of any material directly in the open air including slash, land-clearing or debris burning open fires. Open burning does not include a Recreational Fire”;
- D. Section 1 of the Fire Control Regulations defines “Recreational Fire” as 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”;
- E. Section 4 of the Fire Control Regulations divides Gallatin County into three high fire hazard areas, collectively identified as the “Gallatin County High Fire Hazard Areas,” and these areas do not include any land under the jurisdiction of a federal, state, or municipal agency per § 7-33-2212, MCA;
- F. The “Big Sky High Fire Hazard Area” is the “land in Gallatin County South of 45.407 Degrees (US 191 Milepost 61.5) and North of 45.054 Degrees (US 191 Milepost 32)”;
- G. The “West Yellowstone High Fire Hazard Area” is the “land in Gallatin County South of 45.054 Degrees (US 191 Milepost 32)”;

- H. The “Gallatin Valley High Fire Hazard Area” is the “land in Gallatin County North of 45.407 Degrees (US 191 milepost 61.5)”;
- I. On June 30, 2021, the County Commission adopted Ordinance No. 2021-005, prohibiting all open burning, recreational fires, and the use of fireworks in the Big Sky High Fire Hazard Area and in the West Yellowstone High Fire Hazard Area;
- J. The emergency precautions imposed by Ordinance No. 2021-005 were necessitated by ongoing weather and emergency conditions, including extreme high heat, high winds, local fire activity, low humidity, and general high fire danger;
- K. These conditions have continued and are present in all three Gallatin County High Fire Hazard Areas, creating an emergency situation affecting the public health, welfare, and safety;
- L. The Gallatin County Fire Warden has reported that the Energy Release Component values for Gallatin County have exceeded the historical maximums and are projected to continue exceeding the maximums until fall. These values indicate that vegetation in Gallatin County is at historically dry levels and vulnerable to rapid fire growth;
- M. The County Commission therefore approved Ordinance No. 2021-006 on July 20, 2021, superseding and replacing Ordinance No. 2021-005 to encompass all of Gallatin County, excluding only those lands under the jurisdiction of any federal, state, or municipal agency; and
- N. Ordinance 2021-006 also expanded the fire restrictions previously established through Ordinance No. 2021-005 to include additional activities that create a fire hazard.
- O. One of the fire restrictions in 2021-006 prohibited “[o]perating a motorized vehicle off a road or trail, except for an agricultural or utility activity (e.g. maintaining livestock, maintaining water facilities, or utility maintenance work).”
- P. The Commission desires to amend 2020-006 to create an additional exception to allow the operation of motorized vehicles off a road or trail to conduct forestry management on private land, such as thinning and clearing trees and brush, for fuel reduction and fire mitigation.

Section 2 – Authority

The County Commission has authority to adopt this ordinance pursuant to the procedures set forth in Title 7, Chapter 5, Part 1, MCA. Section 7-5-104, MCA, allows a local government to adopt an ordinance in response to an emergency upon the approval of a two-thirds vote of the governing body and to remain in effect for no more than 90 days. The County Commission may adopt such ordinance without affording public notice or participation per § 2-3-112, MCA, to make a decision to deal with an emergency situation affecting the public health, welfare, or

safety. The Commission also has authority to adopt this ordinance pursuant to § 7-33-2212, MCA, and the Gallatin County Fire Control Regulations, as set forth above.

Section 3 – Regulation

Ordinance No. 2021-005 is hereby superseded and replaced.

Effective immediately, the following acts are prohibited in Gallatin County, excluding only those lands under the jurisdiction of a federal, state, or municipal agency:

1. Open Burning;
2. Recreational Fires, excluding petroleum-fueled devices that can be turned immediately on and off with no element that continues to burn;
3. The use of any explosive, firework, or incendiary device;
4. Smoking outside an enclosed vehicle or building, unless the smoking occurs in an area at least three (3) feet in diameter that is clear of all flammable material; and
5. Operating a motorized vehicle off a road or trail, except for an agricultural or utility activity (e.g. maintaining livestock, maintaining water facilities, or utility maintenance work) or to conduct forestry management on private land (e.g. thinning and clearing trees and brush) for fuel reduction and fire mitigation.

Section 4 – Recommended Restrictions

Although not prohibited by this ordinance, individuals are recommended to refrain from shooting firearms outside of developed shooting ranges clear of natural vegetation.

Individuals engaging in an activity excluded under Section 3, such as agricultural or utility maintenance, should use extreme caution.

Section 5 – Penalty & Enforcement

Pursuant to § 7-5-109, MCA, violation of this ordinance is a misdemeanor and is punishable by a fine not to exceed Five Hundred Dollars (\$500.00), imprisonment of no more than six (6) months in the county jail, or both. In addition, the penalties for Open Burning Permit violations are authorized by § 7-33-2206, MCA. This ordinance may be enforced by any law enforcement officer with jurisdiction.

This ordinance also may be enforced by all civil remedies available at law or in equity, including injunctive relief to enjoin violations hereof.

Section 6 – Severability

Should any provision of this ordinance be determined to be unenforceable or invalid, all remaining terms and clauses shall remain in force and shall be fully severable.

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Section 7 – Absolute Liability Finding

This ordinance has the legislative purpose to impose absolute liability for any conduct described. Pursuant to § 45-2-104, MCA, any violation of this ordinance is subject to absolute liability. A person may be guilty of the offense without having, as to each element of the offense, one of the mental states of knowingly, negligently, or purposely.

Section 8 – Effective Date

Pursuant to § 7-5-104, MCA, this ordinance is effective immediately upon passage and approval by two-thirds vote of the County Commission.

Section 9 – Expiration

This ordinance shall expire automatically 90 days after its adoption per § 7-5-104, MCA, or upon its rescission by the County Commission, whichever occurs first.

PASSED AND APPROVED this ___ day of July, 2021.

GALLATIN COUNTY BOARD OF COUNTY COMMISSIONERS

Scott MacFarlane, Chair

Joe Skinner, Commissioner

Zach Brown, Commissioner

ATTEST:

Eric Semerad, Clerk and Recorder