

## **SUBJECT**

First Reading of Ordinance No. 064, 2013, Amending the City Code to Authorize the City Manager to Ban Open Burning in the City Upon Recommendation of the Fire Chief.

## **EXECUTIVE SUMMARY**

During the spring and summer of 2012, Fort Collins and Larimer County experienced record setting fire weather following a prolonged drought. As a result, the community experienced not only the worst wildfire in the history of Larimer County, but the second largest wildfire in the history of Colorado and the second most costly season in lost homes and property. During this time, Governor Hickenlooper and the Larimer County Commissioner enacted fire bans due to the extreme fire conditions. The Fort Collins City Council also adopted a fire ban through an emergency ordinance (Emergency Ordinance No. 065, 2012). At that time, staff was directed to figure out a more efficient way to implement a fire ban and to avoid the emergency ordinance process.

## **BACKGROUND / DISCUSSION**

2012 was an extraordinary year from a fire danger standpoint and for the first time in recent memory, a fire ban was enacted within the city limits. Even during years when conditions are dry and high fire danger exists in the surrounding open spaces, the fire danger within the city limits is moderate, due to the amount of irrigated property, grass areas, shrubs and trees. However, in 2012, conditions became extreme, and there was an increase in all types of fires, including non-vegetation fires. Potting soil became very dry, which led to more ignitions from discarded smoking materials. Decks and other wooden debris became more susceptible to fire as fuel moistures dropped. It quickly became apparent that fire risks were increasing as the hot, dry and windy conditions persisted. This, coupled with a scarcity of firefighting resources in the state and region, including local crews committed to the High Park fire, eventually led to the determination that a fire ban was needed within the city limits.

Although such conditions do not happen overnight, they can become dangerous more quickly than the routine timeline required to pass an ordinance on First and Second Reading. In 2012, these conditions led to an emergency ordinance with a single reading. At that time, Council expressed concern with the use of an emergency ordinance as a tool in this circumstance, and directed staff to explore other options. In response, staff contacted numerous other jurisdictions to determine what they did in similar situations. Some of the practices of other jurisdictions are:

- Regulations that give the Fire Chief the authority to implement a ban.
- Special ordinances that authorize the City Manager to implement the ban.
- State implemented bans (which may raise home rule issues).

Of all the options explored, it appears that the most efficient, reactive, and easily implemented option is to give the City Manager the authority to implement a ban based on the input of the local fire officials, without Council approval. The City Manager would still be required to provide notice to the City Council within twenty-four (24) hours of the issuance of such a ban. The City Manager would also be authorized to lift the ban as conditions improve, which would allow flexibility to react quickly as conditions change.

This process is currently used in Timnath and is currently under consideration by the Loveland City Council, as well. The Ordinance will apply to all public and private property within the city limits, as well as to all City-owned properties outside of the city limits.

There will be two stages of restrictions based on the severity of the conditions allowing for a phased approach, much as is being done with the water restrictions. A violation of the prohibitions of Stage 1 or 2 fire restrictions in the city would be subject to a misdemeanor violation.

**STAFF RECOMMENDATION**

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Staff recommends adoption of the Ordinance on First Reading.

ORDINANCE NO. 064, 2013  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING THE CODE OF THE CITY OF FORT COLLINS TO  
AUTHORIZE THE CITY MANAGER TO BAN OPEN BURNING IN THE  
CITY UPON RECOMMENDATION OF THE FIRE CHIEF

WHEREAS, during June and July 2012, the area immediately west of Fort Collins was the scene of the High Park Fire, the most catastrophic forest fire in the state's history; and

WHEREAS, the High Park Fire and other severe fire conditions throughout the state in 2012 demonstrated that both weather and fire conditions can change rapidly and may require immediate action of the City to reduce the risk of wildfire within the City limits; and

WHEREAS, the City Council acknowledges that weather conditions, lack of precipitation and heavy fuel loading frequently create a threat of fire in the City and in the neighboring prairies and forests of Larimer County; and

WHEREAS, the City Council recognizes that open fires and open burning can be a prime cause of grass and prairie fires in the City and neighboring communities; and

WHEREAS, as a home-rule municipal corporation created and organized pursuant to Article 20 of the Colorado Constitution and the City Charter, the City has the power to impose restrictions on open burning; and

WHEREAS, the City Council wishes to preserve and protect the public health, safety and welfare of the residents of the City and surrounding areas by restricting open fires and open burning in the municipal limits of the City in order to prevent forest and grass fires when a high danger of such fires exists as a result of atmospheric and natural fuel conditions, including lack of moisture and other local conditions in the City; and

WHEREAS, the emergency nature of severe fire conditions makes the timely issuance of a ban on open burning critical to the safety of the community; and

WHEREAS, the City Code currently allows the City Manager to proclaim the existence of a local emergency for a period of seven days, which period of time can be extended only with the consent of the City Council; and

WHEREAS, the City Code also allows the City Manager to issue emergency rules and regulations in order to protect the safety of City residents and of persons conducting business within the City, which rules and regulations are subject to City Council's confirmation at the earliest practical time; and

WHEREAS, since fire conditions can change quickly, City staff recommends that the City Manager be given the authority to enact restrictions on open burning as fire conditions rise to a

severe level, upon recommendation of the Fire Chief, and without the delay that is inherent in seeking and obtaining City Council approval; and

WHEREAS, such a ban would be enforceable by City police and Poudre Fire Authority officials, so as to protect the public health, safety and welfare of the citizens of Fort Collins.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Chapter 9 of the Code of the City of Fort Collins is hereby amended by the addition of a new Article II which reads in its entirety as follows:

**CHAPTER 9**  
**Article II. Open Fire and Burning Restrictions**

**Sec. 9-5. Application.**

This Article shall apply to all open fires or open burnings when the restrictions authorized by this Article are in effect.

**Sec. 9-6. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section.

*Fire Code Official* shall mean the Chief of the Poudre Fire Authority or his or her designee.

*Fireworks* shall mean “fireworks” as defined in Section 3302.1 of the 2006 International Fire Code adopted and amended at Chapter 9 of the City Code.

*Open fire* or *open burning* shall mean any outdoor fire, including, but not limited to, campfires, warming fires, the lighting of any fused explosives and fireworks of any kind or brand, the lighting of model rockets, and the burning of fence lines or rows, grass lands, fields, farm lands, range lands, wild lands, trash and debris. *Open burning* shall not include:

- (1) fires in liquid-fueled or gas-fueled stoves, grills or fireplaces;
- (2) fires in wood-burning fireplaces that are contained within buildings;
- (3) fires in charcoal grills at private one and two family residences;
- (4) commercial, professional and municipal fireworks displays where specific written approval has been granted by the Fire Code Official; and

(5) prescribed or controlled burns for agricultural or irrigation purposes along ditches located within and completely surrounded by irrigated farmlands where such burning is necessary for crop survival and specific written approval has been granted by the Fire Code Official.

**Sec. 9-7. Declaration of Stage 1 fire restrictions.**

The City Manager may declare Stage 1 Fire Restrictions in the City, after consultation with the Fire Code Official, if he or she determines that the totality of circumstances, including, but not limited to, weather conditions, lack of precipitation, fire conditions, fire restrictions in neighboring communities, and limited availability of suppression resources, have created a potential threat of fire hazards within the City.

The Stage 1 restrictions imposed by this Article shall take effect immediately upon the issuance of an administrative order executed by the City Manager, and shall remain in effect until rescinded by a similar order. The City Manager shall notify the City Council within twenty-four (24) hours after the issuance of such administrative order. The authority granted under this Article is ongoing, and administrative orders may be issued from time to time as conditions warrant.

**Sec. 9-8 Stage 1 fire restrictions/prohibited and permitted acts.**

(1) The following activities are prohibited when Stage 1 fire restrictions are in place:

- a. open burning of any kind without a permit from the Poudre Fire Authority;
- b. open discarding of cigarettes and smoking materials;
- c. welding or the operation of torches with open flame in outdoor areas, including public parks, greenbelts, open spaces and trail systems without a permit;
- d. operating or using any internal combustion engine (e.g., chainsaw) without a spark arresting device properly installed, maintained and in effective working order; and
- e. operating any pest control equipment which relies upon the ignition of flammable gases or liquids.

(2) The following activities are permitted when Stage 1 fire restrictions are in place:

- a. fires within liquid-fueled or gas-fueled appliances including fire pits, grills, and camp stoves; fireplaces within buildings; charcoal grill fires within developed residential or commercial areas; fires within wood burning stoves;
- b. fires specifically authorized by a permit issued by the Fire Code Official, including permitted professional fireworks displays;
- c. fire department training fires;
- d. tiki torches; small recreational fires at developed picnic or campground sites contained in permanent fire pits or fire grates having a total fuel area of three (3) feet or less in diameter and two (2) feet or less in height and which are supervised by a responsible person at least twenty-one (21) years of age;
- e. open fires or open burning by any federal, state or local officer or member of an organized fire protection district or department in the performance of official fire suppression functions; and
- f. wood, gas or liquid fueled commercial cooking or smoking appliances when used for commercial food preparation.

(3) It shall be unlawful for any person to start, build, maintain, attend or use an open fire or conduct open burning in violation of the prohibitions of Stage 1 fire restrictions in the City, including public, private, state and federal lands while such restrictions are in effect.

**Sec. 9-9 Declaration of Stage 2 restrictions.**

The City Manager may declare Stage 2 fire restrictions in the City, after consultation with the Fire Code Official, if he or she determines that the totality of circumstances, including, but not limited to, weather conditions, lack of precipitation, fire conditions, fire restrictions in neighboring communities, and limited availability of suppression resources have created an imminent threat of fire hazards within the City.

The Stage 2 restrictions imposed by this Article shall take effect immediately upon the issuance of an administrative order executed by the City Manager, and shall remain in effect until rescinded by a similar order. The City Manager shall notify the City Council within twenty-four (24) hours after the issuance of such administrative order. The authority granted under this Article is ongoing, and administrative orders may be issued from time to time as conditions warrant.

**Sec. 9-10. Stage 2 restrictions/prohibited and permitted acts.**

(1) The following activities are prohibited when Stage 2 fire restrictions are in place:

- a. all fires prohibited under Section 9-8(1);
- b. open burning of any kind;
- c. charcoal grill fires within developed residential or commercial areas;
- d. burning of explosive wastes by the manufacturer of explosives in areas zoned for industrial use, when the burning is supervised by a fire protection district;
- e. use of or fires in chimneys, other portable fireplaces or patio fire pits (which are not liquid or gas fueled); and
- f. campfires at developed campgrounds or picnic areas.

(2) The following activities are permitted when Stage 2 fire restrictions are in place:

- a. fires within liquid-fueled or gas-fueled appliances including fire pits, grills, and camp stoves;
- b. use of all fireplaces and wood burning stoves within buildings;
- c. fire department training fires;
- d. open fires or open burning by any federal, state or local officer or member of an organized fire protection district or department in the performance of official fire suppression functions;
- e. wood, gas or liquid fueled commercial cooking or smoking appliances when used for commercial food preparation after review and approval of the Fire Code Official.

(3) It shall be unlawful for any person to start, build, maintain, attend or use an open fire or conduct open burning in violation of the prohibitions of Stage 2 fire restrictions in the City, including public, private, state and federal lands while such restrictions are in effect.

**Sec. 9-11. Enforcement.**

The provisions of this Article shall be enforced by the Chief of Police, City police officers, and the Fire Code Officials as defined in the International Fire Code, as adopted and amended at Chapter 9 of the City Code.

**Sec. 9-12 Violations; penalties.**

Any person who violates any provision of this Article commits a misdemeanor criminal offense and is subject to the penalty provisions of Subsection 1-15(a) of the City Code.

Introduced, considered favorably on first reading, and ordered published this 16th day of April, A.D. 2013, and to be presented for final passage on the 7th day of May, A.D. 2013.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 7th day of May, A.D. 2013.

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Mayor

ATTEST:

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City Clerk