

CITY OF LAFAYETTE

ORDINANCE NO. 26, Series 2022

INTRODUCED BY: Councilor Stephanie Walton

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, ENACTING ARTICLE IV OF CHAPTER 45 OF THE CODE OF ORDINANCES OF THE CITY OF LAFAYETTE, COLORADO, REGARDING FIRE RESTRICTIONS

WHEREAS, Colorado's Division of Fire Prevention and Control predicts that the current wildfire season, because of the above-average temperature, below-average precipitation, severe drought conditions, and increasing episodes of downslope wind events could be one of the worst in the State's history; and

WHEREAS, wildfires and their devastation are becoming increasingly more frequent as the Colorado Division of Fire Prevention and Control records indicate that four of the five largest wildfires in the State occurred between 2018 and 2020; and

WHEREAS, wildfires increasingly pose a danger to urban areas as demonstrated by last year's Marshall Fire in Boulder County, which, fueled by dry conditions and spread by high winds, destroyed or damaged over 1000 homes and 30 commercial structures, and with losses to residential structures of between \$819 million and \$1.6 billion; and

WHEREAS, the City Council therefore desires to authorize certain City officials to impose fire restrictions when necessary to protect the health, safety and welfare of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. That the Code of Ordinances, City of Lafayette, Colorado, is hereby amended by enacting Fire Restrictions, Article IV of Chapter 45, which article reads as follows:

ARTICLE IV – FIRE RESTRICTIONS

Sec. 45-61. Definitions.

The following words, terms and phrases used in this article shall have the following meaning except where the context clearly indicates a different meaning.

City administrator means the city administrator or the administrator's authorized designee.

Fire chief means the city's fire chief or the fire chief's authorized designee.

Hot work means operations including, but not limited to, cutting, welding, thermit welding, brazing, soldering, grinding, thermal spraying, thawing pipe, installation of torch-applied roof

systems, or any other similar activity. It also includes the operation of an electric or gas-fueled portable powered welder or cutting appliance that produces heat, flame, sparks, or molten metal slag.

Liquid or gas-fueled appliance means any equipment or device that burns liquid or gaseous fuel that can be shut off by means of a switch or other mechanical means and that is designed or intended for use outdoors to produce heat for pleasure, religious, ceremonial, cooking, warmth, or similar purposes. This includes, but is not limited to, a liquid or gas-fueled camp stove, fire pit, or grill.

Open burning means the burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. Open burning does not include road flares, smudge pots and similar devices associated with safety or occupational uses typically considered open flames, recreational fires, or use of portable outdoor fireplaces. For the purpose of this definition, a chamber shall be regarded as enclosed when, during the time combustion occurs, only apertures, ducts, stacks, flues, or chimneys necessary to provide combustion air and permit the escape of exhaust gas are open.

Portable outdoor fireplace means a portable, outdoor solid-fuel-burning fireplace that may be constructed of steel, concrete, clay, or other noncombustible material. A portable outdoor fireplace may be open in design or may be equipped with a small hearth opening and a short chimney or chimney opening in the top. This type of fireplace is commonly known as a chiminea.

Recreational fire means an outdoor fire burning of materials other than rubbish where the fuel being burned is not contained in an incinerator and that has a total fuel area of three feet (914 mm) or less in diameter and two feet (610 mm) or less in height for pleasure, religious, ceremonial, cooking, warmth, or similar purposes. For purposes of this article, a recreational fire includes, but is not limited to, a fire in a charcoal barbeque grill, a barbeque pit, a fire pit, or a fixed, permanent outdoor fireplace that is fueled by charcoal, wood, or other solid fuel, a fire in a barrel or drum, a fire in a portable outdoor fireplace, or a fire in a tiki torch, or in a similar device, object, or piece of equipment. It also includes any fire created as a result of the use of liquid- or gas-fueled appliance.

Sec. 45-62. Declaration of Fire Restrictions.

(a) The city administrator may declare fire restrictions, where after consultation with the fire chief, the city administrator determines that the totality of the circumstances including, but not limited to, the use of the national fire danger ratings system, predictions of future fire danger, such as those issued by the state's division of fire prevention and control, localized evidence of low fuel moisture control, weather conditions, existence of fires in close proximity to the city and the availability of fire suppression resources, create a viable threat of fire hazards within the city.

(b) The restrictions shall take effect immediately upon the city administrators' issuance and publication of the declaration and its restrictions on the city's website and shall remain in effect until rescinded by the city administrator. The city administrator shall notify city council of the declaration and restrictions as soon as possible upon issuance.

(c) The declaration shall set forth the effective date of the commencement of the restrictions, its geographic parameters, and the specific restrictions and exceptions.

(d) The declaration may be rescinded by the city administrator upon consultation with the fire chief that there exists competent evidence to rescind the restrictions, and by publication of the termination of the restrictions on the city's website. Such notice shall specify the date of termination of the restrictions.

Sec. 45-63. Stage 1 fire restrictions – unlawful acts.

(a) *Fire restrictions generally.* It shall be unlawful for any person to build, maintain, attend to, or use a recreational fire or an open burn within the city after a Stage 1 fire restrictions declaration has been issued by the city administrator.

(b) *Exceptions.* The following acts or activities are allowed during a declared Stage 1 fire restrictions period:

- (1) Smoking, if it is done in an enclosed vehicle or building, or outdoors in an area that is more than thirty feet from an undeveloped area, and then, only if smoking is otherwise allowed under existing state and local smoking laws.
- (2) The use of a recreational fire, if it is contained within a permanently constructed fire grate upon private property or within a park, and if the fire is more than 30 feet from an undeveloped area.
- (3) The use of a liquid- or gas-fueled appliance.
- (4) The use of an Underwriters Laboratories (UL) listed wood pellet grill.
- (5) The operation of a chain saw.
- (6) Hot work operations if the work is performed in an area more than 30 feet from an undeveloped area.
- (7) Training fires for the city's fire department personnel and open burning by authorized personnel seeking to suppress a fire.

Sec. 45-64. Stage 2 fire restrictions – unlawful acts.

(a) *Fire restrictions generally.* It shall be unlawful for any person to build, maintain, attend to, or use a recreational fire or an open burn within the city after a Stage 2 fire restriction declaration has been issued by the city administrator.

(b) *Exceptions.* The following acts or activities are allowed during a declared Stage 2 fire restriction period:

- (1) Smoking, if it is done in an enclosed vehicle or building, or outdoors in an area that is more than thirty feet from an undeveloped area, and then, only if smoking is otherwise allowed under existing state and local smoking laws.
- (2) The use of a liquid- or gas-fueled appliance.
- (3) The use of Underwriters Laboratories (UL) listed wood pellet grill.
- (4) The operation of a chain saw equipped with a properly installed and operational spark arresting device. The operator must also have readily available for quick use at all times while the saw is being operated an extinguishing source such as a pressurized water extinguisher, a proper chemical pressurized extinguisher that is large enough to handle nearby hazards, or sufficient water to extinguish any fire created through use of the saw. In addition, the operator must have in their possession at all times while the saw is being operated at least one pointed shovel with an overall length of at least 36 inches.
- (5) Hot work operations if the work is performed in an area that is barren or cleared of all combustible material more than 30 feet in all directions from the operating equipment, and with a permit from the fire code official having jurisdiction over the operating location.
- (6) Open burning by authorized personnel seeking to suppress a fire.

Sec. 45-65. Enforcement; initiation of prosecution. Peace officers of the city's police department and the city's fire marshal are authorized to issue a summons and complaint to any person for violation of the unlawful acts set forth in this article.

Secs. 45-66—45-75. – Reserved.

Section 2. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 4. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any

judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 5. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 6. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Code of Ordinances, City of Lafayette, Colorado.

Section 7. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 19TH DAY OF JULY, 2022.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 2ND DAY OF AUGUST, 2022.

CITY OF LAFAYETTE, COLORADO

Jaideep Mangat, Mayor

ATTEST:

Lynnette Beck, City Clerk

APPROVED AS TO FORM:

Mary Lynn Macsalka, City Attorney