

OFFICIAL PROCEEDINGS OF THE APACHE COUNTY
BOARD OF SUPERVISORS MEETING
February 26, 2018
St. Johns, Arizona

Present were: Supervisor Joe Shirley, Jr. and County Manager/Clerk of the Board Ryan Patterson and County Attorney Michael Whiting. Participating via the telephones was Chairman Alton Joe Shepherd and Vice Chairman Doyel Shamley.

Chairman Shepherd called to order the Board of Supervisors meeting at 10:04 a.m. in the Board of Supervisors chambers, County Annex Building, 75 West Cleveland Street, St. Johns, Arizona, and welcomed all in attendance.

Brannan Eagar, Emergency Management Director, presented the item following a public hearing, discussion and possible approval to update the Outdoor Fire Ordinance for the unincorporated areas of the county. Chief Eagar stated this ordinance establishes fire zones in the unincorporated areas, establishing restrictions on certain outdoor fires, providing fire implementation of emergency fire restrictions and specifying civil and criminal penalties for violations of the ordinance. **Mr. Shirley moved to open the public hearing, seconded by Mr. Shamley.** Vote was unanimous. There was no one wanting to address the Board, or no written comments received. **Mr. Shirley moved to close the public hearing, seconded Mr. Shamley.** Vote was unanimous. **Mr. Shamley moved to approve the Outdoor Fire Ordinance, seconded by Mr. Shirley.** Vote was unanimous.

OUTDOOR FIRE ORDINANCE

Ordinance 2018-03

An ordinance of the Board of Supervisors of Apache County, Arizona, repealing Ordinance No. 2014-05 (Open Outdoor Fire Ordinance); establishing fire zones in the unincorporated area; establishing restrictions on certain outdoor fires; providing for the implementation of emergency fire restrictions; and specifying civil and criminal penalties for violations.

Preface

The purpose of fire restrictions is to reduce the risk of human-caused fires during periods of unusually high fire danger and/or burning conditions. Fire restrictions impose many limitations on the public, and therefore should be implemented only after all other prevention measures have been taken. These measures include, but are not limited to: increasing the number of prevention signs, public contacts, media campaigns, increased enforcement of the restrictions, etc. Fire restrictions should be considered when high to extreme fire danger is predicted to persist. Other considerations are the level of human-caused fire occurrences being experienced, firefighting resources available, high human-caused risk potential, live fuel moisture is at or approaching historic thresholds, no significant relief in fire weather potential in the immediate forecast, large fire activity occurring

on a unit (within the county) or within the Region, and fire preparedness levels so indicate. An appropriate level of preparedness to meet wildland fire management objectives is based upon an assessment of vegetation, climate, and topography utilizing the National Fire Danger rating system (NFDRS).

Emergency closures have an extreme impact on the public and fire agencies, and are discouraged except under the most severe conditions. Closures should be implemented only in situations where the public's safety cannot be guaranteed. Closures are not justified by fire danger alone, but should be driven by the potential for risk to life safety due to extreme fire behavior, high potential for human-caused fires, severe shortages of resources, and numerous large fires.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF APACHE COUNTY AS FOLLOWS:

1. **TITLE**

This ordinance shall be known as the Apache County Outdoor Fire Ordinance.

2. **REPEAL OF PRIOR ORDINANCE**

Ordinance No. 2014-05 the Open Outdoor Fire Ordinance, is hereby repealed in its entirety.

3. **EFFECTIVE AREA /FIRE ZONES**

This Ordinance is effective in the unincorporated area of Apache County, exclusive of areas under the jurisdiction of the United States, the State of Arizona or a federally recognized Indian tribe. For purposes of this Ordinance, the unincorporated area has been divided into two fire zones as depicted on the map attached hereto.

4. **PURPOSE /AUTHORITY OF EMERGENCY MANAGEMENT DIRECTOR**

4.1 The purpose of this Ordinance is to help provide a uniform system for political subdivisions in Apache County to determine what fire restrictions are needed and when they are to be put into place during emergency fire conditions.

4.2 It is the duty of the Apache County Emergency Management Director/Manager, (after consultation as the Emergency Management Director/Manager deems appropriate, with the U.S. Forest Service ("USFS"), local Fire Districts, state or municipal Emergency Management Directors, or other fire officials) to initiate fire restrictions within any fire zone (or zones) during emergency fire conditions as described in Section 7.

4.2.1 The Emergency Management Director/Manager shall utilize the USFS Apache-Sitgreaves NFRDS and Fire Preparedness level indicators (www.fs.fed.us) to help determine when such restrictions are necessary. As a general guideline, emergency fire restrictions should be considered when

the Energy Release Components (ERC) reading reaches 90% for the last 5 days.

- 4.2.2 The Emergency Management Director/Manager shall attempt to coordinate with other fire officials in the affected zone(s) a uniform date for implementing such restrictions.
- 4.2.3 When the Emergency Management Director/Manager determines that such restrictions are necessary, and the date of implementation has been determined, the Emergency Management Director shall recommend to the Chairman of the Board of Supervisors or designee, that such restrictions be ordered pursuant to the Chairman's emergency powers under Title 26, Chapter 2, Article 1 of the Arizona Revised Statutes. Upon the issuance of the Chairman's order, the Emergency Management Director shall promptly take appropriate steps to notify residents and visitors of the nature and extent of the restrictions and the effective date.
- 4.2.4 Upon issuance of the initial order, the County shall suspend issuance of burning permits until the emergency fire restriction order is lifted.
- 4.2.5 Upon issuance of the initial order, the Chairman authorizes the Emergency Management Director/Manager to modify the restriction level or cancel the restrictions as conditions warrant per the NFRDS and Preparedness levels indicators to determine the cancellation of restrictions.
The Emergency Management Director/manager shall immediately notify the Chairman and the County Manager of any changes in restriction and provide an update of the change in restrictions at the next legally scheduled Board meeting.

5. **DEFINITIONS**

- 5.1 "Campfire" means an open outdoor fire used only for the cooking of food or for providing personal warmth for human beings or for recreational purposes.
- 5.2 "Charcoal Fire" means an open outdoor fire which uses primarily charcoal as the combustible material, and which is used only for the purpose of cooking food.
- 5.3 "Combustion Engines" means an engine which generates mechanical power from a fuel. This includes an engine in which combustion is intermittent such as four-stroke, two-stroke, gas turbines, and diesel engines.
- 5.4 "Emergency Management Director" means the County official designated as such by the Board of Supervisors.

- 5.5 "Firearms" means a weapon that launches one or more projectiles at high velocity through the confined burning of a propellant
- 5.6 "Fireworks" means any composition or device consisting of a combination of explosives and combustibles, detonated to generate colored lights, pyrotechnic displays, smoke, and noise for amusement or entertainment purposes.
- 5.7 "Flue" means a pipe, tube, channel, duct or passage through which hot air, gas, steam, smoke or fire may pass, such as a chimney, stovepipe or stack.
- 5.8 "Open Outdoor Fire" means any burning, oxidation or combustion of combustible material of any type in the open where the products of combustion are not directed through a flue, but not including campfires and charcoal fires.
- 5.9 "Recreational Fire" means burning of materials other than rubbish where fuel being burned is not contained in an incinerator, outdoor fireplace, barbecue grill or barbecue pit with a total fuel area of 3 feet (914 mm) or less in diameter and 2 feet (610 mm) or less in height for pleasure, religious, ceremonial, cooking or similar purposes.
- 5.10 "Red Flag Warning" (or "Red Flag Conditions") means a determination by the National Oceanic and Atmospheric Administration to inform the County and other agencies of the imminent or actual occurrence of extreme fire danger or extreme fire conditions.

6. **NON-EMERGENCY FIRE RESTRICTIONS**

The following restrictions are in effect at all times in all zones, except as they may be superseded by emergency fire restrictions pursuant to Section 7:

- 6.1 It is unlawful for any person to start, ignite, cause or permit to be ignited, or allow or maintain any open outdoor fire except as allowed by permit through the Emergency Management Director, the applicable Fire District, or the Arizona Department of Environmental Quality pursuant to Title 49, Chapter 3 of the Arizona Revised Statutes. The following fires are exempt from this restriction:

EXEMPTIONS:

An exemption does not absolve an individual or organization from liability or responsibility for any fire started by the exempted activity.

- 6.1.1 Fires used only for the cooking of food or for providing warmth for human beings or for recreational purposes (campfires and charcoal fires); for the branding of animals; for the purpose of frost protection in falming or nursery; or for the disposal of flags pursuant to federal law.

- 6.1.2 Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or such permission is given for the purpose of instruction in the methods of fighting fires.
- 6.1.3 Fires set or permitted by authority of the director of the Arizona Department of Agriculture or by Apache County agricultural agents for the purposes of disease and pest prevention.
- 6.1.4 Fires authorized by special permits as issued by the Emergency Management Director/Manager.
- 6.1.5 After coordination with the Emergency Management Director/Manager, Fires set by or permitted by the federal government or any of its departments, agencies or agents, or by the State or any of its agencies, departments or political subdivisions, for the purpose of watershed rehabilitation or control through vegetative manipulation.
- 6.1.6 Fires permitted by any rule or regulation adopted pursuant to Title 49, Chapter 3, Article 3 of the Arizona Revised Statutes, by any special or conditional permit issued by a hearing board established under said Article 3, or by any rule or conditional permit issued pursuant to Title 49, Chapter 3, Article 2, when pursuant to ARS § 49-402 the Arizona Department of Environmental Quality has assumed jurisdiction of the portion of Apache County where the fire is located.
- 6.1.7 Fires permitted by Local Fire Chief's within their Jurisdiction.
- 6.1.8 Fires for the purpose of burning rubbish, waste material or refuse.

7. **EMERGENCY FIRE RESTRICTIONS**

In addition to the non-emergency fire restrictions set forth in Section 6, the following emergency fire restrictions when ordered and in effect shall apply to the zone(s) in which they have been implemented:

- 7.1 During "Red Flag Warning" conditions, as posted by the National Weather Service, no open outdoor fires, campfires, charcoal fires or outdoor smoking are permitted on either public or private property within the unincorporated area of the affected zone(s).
- 7.2 When it has been determined by the Emergency Management Director/Manager that additional emergency fire restrictions are needed to assure the safety of the public in any zone(s), the Director shall recommend that the Chairman of the Board of Supervisors order additional emergency restrictions at the appropriate

restriction stage level.

- 7.3 When it has been determined by the Emergency Management Director/Manager that additional emergency fire restrictions are needed to assure the safety of the public in any zone(s), the issuance of burning permits shall be suspended until the emergency fire restrictions are lifted.
- 7.3.1 Burn permits issued prior to the emergency fire restrictions declaration shall be suspended until the fire restrictions have been lifted.
- 7.4 It shall be unlawful for any person to use fireworks when emergency fire restrictions are in effect. Prohibitions of fireworks include but are not limited to consumer or display fireworks, ground and handheld sparkling devices, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, tracer bullets and/or explosive targets in the unincorporated areas of Apache County.

STAGE I: Fire Restrictions

The following acts are prohibited until further notice:

1. Building, maintaining, attending, or using a fire, campfire, unless noted in the exemptions below.
2. Smoking, except within an enclosed vehicle or building, a developed recreation site, or while stopped in an area at least three feet in diameter that is barren or cleared of all flammable materials.
3. Use of any and all fireworks.
4. Use of Tracer bullets and/or explosive targets.

Note: for the smoking provision, each agency/tribe must cite their actual regulations/laws; therefore the wording for the prohibition may be slightly different.

Exemptions:

An exemption does not absolve an individual or organization from liability or responsibility for any fire started by the exempted activity.

1. Fires used only for the cooking of food or for providing warmth for human beings or for recreational purposes (campfires and charcoal fires) in an area that is designated for that purpose and is barren or cleared of all debris.
2. Persons using a device solely fueled by liquid petroleum or LPG fuels that can be turned on and off. Such devices can only be used in an area that is barren or cleared of all overhead and surrounding flammable materials within 3 feet of the device.
3. Persons conducting activities in those designated areas where the activity is specifically authorized by written posted notice.
4. After coordination with the Emergency Management Director/Manager, any Federal, State, local officer or member of an organized rescue or firefighting force in the performance of an official duty.
5. All land within a city boundary is exempted unless otherwise stated by city ordinance.

6. Other exemptions unique to each agency/tribe.

STAGE II: Fire Restrictions

The following acts are prohibited until further notice:

1. Building maintaining, attending, or using a fire, campfire, charcoal, coal, or wood stove including fires in developed campgrounds or improved sites.
2. Smoking, except within an enclosed vehicle or building.
3. Mechanical and Industrial Prohibitions
 - a. Operating any internal combustion engine other than exemption 7 below.
 - b. Welding, or operating acetylene or other torch with open flame.
 - c. Using an explosive.
4. Operating motorized vehicles off designated roads and trails.
5. Use of any and all fireworks.
6. Use of Tracer bullets and/or explosive targets.

Exemptions:

An exemption does not absolve an individual or organization from liability or responsibility for any fire started by the exempted activity.

1. Persons with a written permit that specifically authorizes the otherwise prohibited act.
2. Industrial operations where specific operations and exemptions are identified and mitigation measures are implemented as outlined in an agency plan.
3. Persons operating internal combustion engines with spark arrestors such as lawnmowers and landscaping equipment in maintained landscaped space.
4. Welding, or operating acetylene or other torch with open flame in an enclosed or developed area designated for that purpose that is equipped with appropriate fire protection.
5. Persons using a device fueled solely by liquid petroleum or LPG fuels that can be turned on and off. Such devices can only be used in an area that is barren or cleared of all overhead and surrounding flammable materials within 3 feet of the device.
6. Operating generators with an approved spark arresting device within an enclosed vehicle or building or in an area that is barren or cleared of all overhead and surrounding flammable materials within three feet of the generator.
7. Operating motorized vehicles on designated roads and trails so long as you park in an area devoid of vegetation within 10 feet of the roadway.
8. Emergency repair of public utilities and railroads and mitigation measures are implemented as outlined in an agency plan.
9. Persons conducting activities in those designated areas where the activity is specifically authorized by written posted notice.
10. After coordination with the Emergency Management Director/Manager, any Federal, State, or local officer, or member of an organized rescue or firefighting force in the performance of an official duty.
11. All land within a town boundary is exempted unless otherwise stated by town ordinance.

STAGE III: Fire Restrictions

Extreme Fire Danger is the method that would be employed if conditions are so extreme that the potential of a catastrophic disaster is highly likely.

Examples include:

- Potential loss of life due to explosive fire conditions.
- Potential for extreme or blowup fire behavior.
- Stage II restrictions are not effective in reducing the number of human-caused fires.
- Resources across the geographic area are at a critical shortage level.

The following acts are prohibited until further notice:

1. Building maintaining, attending, or using a fire, campfire, charcoal, coal, or wood stove including fires in developed campgrounds or improved sites.
2. Smoking, except within an enclosed vehicle or building.
3. Mechanical and Industrial Prohibitions
 - a. Operating any internal combustion engine.
 - b. Welding, or operating acetylene or other torch with open flame.
 - c. Using an explosive.
4. Operating motorized vehicles off designated roads and trails.
5. Use of any and all fireworks.
6. Use of explosive targets.
7. Use of tracer round ammunition.

EXEMPTIONS:

An exemption does not absolve an individual or organization from liability or responsibility for any fire started by the exempted activity.

1. Persons with a written permit that specifically authorizes the otherwise prohibited act.
2. Emergency repair of public utilities and railroads as per attached conditions.
3. Persons conducting activities in those designated areas where the activity is specifically authorized by written posted notice.
4. After Coordination with the Emergency Management Director/Manager, any Federal, State, or local officer, or member of an organized rescue or firefighting force in the performance of an official duty.
5. All land within a city boundary is exempted unless otherwise stated in city ordinance.
6. Other exemptions unique to each town /tribe.

8. FIRES EXEMPT FROM EMERGENCY RESTRICTIONS

The following fires are exempt from the provisions of the emergency fire restrictions set forth in Section 7.

EXEMPTIONS:

An exemption does not absolve an individual or organization from liability or responsibility for any fire started by the exempted activity.

- 8.1** Fires set or permitted by any public officer, federal, state or local, in the performance of the officer's official duties.
- 8.2** Fires set or permitted by the State Entomologist or Apache County agricultural agents for the purpose of disease and pest prevention.
- 8.3** After coordination with the Emergency Management Director/Manager, Fires set or permitted by the United States, the State of Arizona or any federally recognized Indian tribe, or any of their respective departments, agencies or political subdivisions, for the purpose of fire prevention or control, or watershed rehabilitation or control through vegetative manipulation.
- 8.4** Any federally recognized Indian Tribe.
- 8.5** Fires permitted by the Emergency Management Director or designee. The conditions of the permit, including permitted date(s) and the nature of the burning, shall be clearly stated on every such permit issued.
- 8.6** Fires permitted by Local Fire Chiefs within their Jurisdiction.

9. FAILURE TO OBEY LAWFUL ORDER

Under Emergency Fire Restrictions, Stage II or III, failure to obey a lawful order by the Emergency Management Director/Manager, a peace officer, a firefighter or other officer of a Fire District, or uniformed personnel of the USFS acting within the officers area of Jurisdiction or failure to comply with the requirements of this Ordinance (including without limitation an order to extinguish or put out any lit, burning or smoldering materials during emergency fire restrictions) shall be a distinct and separate violation of this Ordinance.

10. ENFORCEMENT /PENALTIES

10.1 This Ordinance may be enforced by the Emergency Management Director or designee, any peace officer acting within the officer's area of jurisdiction, a firefighter or other officer of a Fire District acting within the officer's area of jurisdiction, or uniformed personnel of the USFS acting within their area of jurisdiction.

10.2 Civil Violation. Except as set forth in Section 10.3, when a violation of this Ordinance is undesignated or is designated a first offense by the enforcement official or prosecuting attorney, a person found to have violated this Ordinance shall be deemed to have committed a civil offense and shall be subject to a civil penalty of not less than one hundred dollars (\$100) nor more than seven hundred and fifty dollars (\$750), plus surcharges, fees and court costs, plus restitution for any medical treatment required, reimbursement for emergency response personnel and equipment and any property damage or other economic loss suffered by any person as a result of such violation.

10.3 Criminal Violation. When a person convicted of a violation of this Ordinance has previously been charged with a violation of this Ordinance during the preceding 12 months, or has refused to obey the lawful order of an officer as set forth in Section 9, the person shall be deemed to have committed a Class 2 misdemeanor and shall be subject to a fine of not less than two hundred and fifty dollars (\$250) nor more than seven hundred and fifty dollars (\$750) for each violation or count, plus surcharges, fees and restitution for any medical treatment required and reimbursement for emergency response personnel and equipment, and any property damage or other economic loss suffered by any person as a result of such violation.

10.4 Continuing violations. If any violation of this Ordinance is a continuing one, each day shall be deemed a separate violation.

SO ORDAINED by the Apache County Board of Supervisors at St. Johns, Arizona on February 26, 2018.

APACHE COUNTY BOARD OF SUPERVISORS

By: /s/ Alton Joe Shepherd
Chairman of the Board

ATTEST:

/s/ Ryan Patterson
Clerk of the Board Supervisors

David Romero, Chief Deputy Treasurer, requested approval to extend the county's banking service agreement with National Bank of Arizona for a period of two years based on mutual consent from both parties, pursuant to ARS §35.325. Mr. Romero stated his office received a letter from the bank to enter into two-year extension for the banking services and the attorney's office has reviewed the letter. **Mr. Shirley moved approval, seconded by Mr. Shamley.** Vote was unanimous.

Chairman Shepherd presented the item following a possible executive session for legal advice pursuant to A.R.S. § 38-431.03(A)(3) and/or discussion and/or consideration of salary amounts and contractual terms regarding the employment of the County Manager pursuant to A.R.S. § 38-431.03(A)(1), discussion and possible action regarding the appointment, starting salary and/or employment contract of the County Manager. Chairman Shepherd stated he is aware there have been ongoing contract negotiations between Mr. Whiting and Mr. Patterson. Mr. Shirley stated he did not believe executive session was needed; it is his understanding that Mr. Patterson is in agreement with the contract so unless Mr. Patterson would like to go into executive session, he would suggest the board talk about it in open meeting. Mr. Patterson stated he was fine with the discussion in open meeting. **Mr. Shirley moved to accept the contract terms as presented by human resources who worked with Mr. Patterson and the County Attorney, and approve the contract as presented, seconded by Mr. Shepherd.** Mr. Shamley stated he appreciates putting this on the agenda and moving forward but he received an email yesterday at 4:15 p.m. that included the background material regarding this item. Mr. Shamley stated the contract should not be approved today since none of the backup information he received was able to be published online for the public to see. Mr. Whiting stated from a legal standpoint regarding the open meeting law, backup material is not required for notice to the public, so the board is able to do as it chooses today; either accept the contract, adjust the terms of the contract or reject the contract. Mr. Shirley stated the county manager and the attorney are fine with the terms and still supports the motion he made to approve the contract. Mr. Shirley stated the county manager works for, and with the Board and the different departments and not so much with the public though certainly the public has input all the time, but in this case the position works for the board. Mr. Shepherd stated he based his second to Mr. Shirley's motion on the last meeting where there was a unanimous approval to go this route and the terms have been discussed and negotiated. Mr. Shepherd stated he received the information yesterday just as Mr. Shamley indicated, but feels this is something that the Board is fulfilling from the last meeting and that is why he is seconding the motion. Mr. Shamley stated he is concerned with one of the clauses in the contract where it requires a unanimous approval by the Board to remove the county manager. Mr. Shamley stated it is odd that the Board can remove the assessor and the treasurer from office with two votes, and counties across the state are not requiring a unanimous vote on issues much larger than a single person's employment. Mr. Shamley expressed his concern with the clause regarding severance pay and the unanimous vote requirement, and stated these issues were the type where he thought there would be input from his district throughout the process. Mr. Shirley stated this is a contract between the board and the county manager; not the county manager and the people. Mr. Shamley stated the board and the county manager have not discussed the contract; it was sent in an email at 4:15 p.m. yesterday. Mr. Shamley stated theoretically the board was going to discuss the terms of the contract and that never took place, so we are having to do it here and he believes the contract should not be boxed in to one single off/on type situation for a termination by unanimous vote and given three months of severance pay. Mr.

Shamley stated he believes there needs to be differences in the contract regarding the termination and severance, but those options aren't even included in the contract. Mr. Whiting stated legally, the board can enter into a contract that requires a unanimous vote; he understands what Mr. Shamley is saying, and as he may agree with him, the issue he is faced with, and what he provides the board is just strictly legal advice; he does not opine what is a better clause verses a worse clause, he simply advises the board as to if the contract as a whole is legal. Mr. Whiting stated this is a contract that is legal, and the board can enter into it if they so choose and he refrains from expressing his personal feelings about any contract that comes before the board. Chairman Shepherd stated the contract can be modified or changed at a later date. Motion passed 2-1 with Mr. Shamley voting nay.

Mr. Patterson presented notification of the National Organization of Counties Annual Legislative Conference March 3-7, 2018 at the Washington Hilton Hotel, 1001 16th Street N.W., Washington, DC where two or more members of the Apache County Board of Supervisors may be in attendance.

Mr. Shirley moved to adjourn the meeting, seconded by Mr. Shamley. Vote was unanimous.

The meeting adjourned at 10:20 a.m.

Approved this 3rd day of April 2018.

/s/ Alton Joe Shepherd
Chairman of the Board

/s/ Ryan Patterson
Clerk of the Board