

ORDINANCE NO. 2019- 10



**OUTDOOR FIRE ORDINANCE**

An ordinance of the Board of Supervisors of Apache County, Arizona, repealing Ordinance No.2018-03 (Open Outdoor Fire Ordinance); establishing fire zones in the unincorporated area; establishing restriction on certain outdoor fire; providing for the implementation of emergency fire restrictions; and specifying 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 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).

**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Ordinance No.2018-03 the Open Outdoor Fire Ordinance is hereby repealed in its entirety.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, excluding areas under the jurisdiction of the United States, the State of Arizona, or a federally recognized Indian tribe. For the purpose of the 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, National Weather Service, 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 National Fire-Danger Rating System (NFDRS) and Fire Preparedness level indicators ([www.fs.fed.us](http://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 (ERCs) reading reaches 90% for at least 5 consecutive 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 and Fire Departments/Districts 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 National Fire-Danger Rating System (NFDRS) and preparedness level indicators to determine the cancellation of restrictions

4.2.5.1 The Emergency Management Director/Manager shall immediately notify the Chairman and the County Manager of any changes in restriction and provide an update in restrictions at the next legally scheduled Board meeting.

## 5. Definitions

5.1 ‘Attendance’ Open burning, bonfires or recreational fires shall be constantly attended until the fire is completely and properly extinguished. Appropriate tools, equipment or approved devices and approved extinguishing agents such as dirt, sand, water or approved appropriate fire extinguishers shall be readily available for immediate utilization. A fire shall be considered “Unattended” if it is not constantly monitored with the appropriate

tools and equipment and properly extinguished.

- 5.2 'Authority Having Jurisdiction' (AHJ) Means an entity that has the authority and responsibility for developing, implementing, maintaining, and overseeing the qualification process within its organization or jurisdiction. This may be a state or Federal agency, training commission, NGO, private sector company, or a tribal or local agency such as a police, fire, or public works department. In some cases, the AHJ may provide support to multiple disciplines that collaborate as a part of a team (e.g., an IMT).
- 5.3 'Bonfire' means an outdoor fire utilized for ceremonial purposes and shall not be less than 50 feet (15,240 mm) from any structure.
- 5.4 '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.
- 5.5 '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.
- 5.6 'Deliberate or Negligent' burning means to deliberately or through negligence set fire to or cause the burning of combustible material in such a manner as to endanger the safety of persons or property.
- 5.7 'Emergency Management Director' means the County official designated as such by the Board of Supervisors.
- 5.8 'Explosive or Reactive Targets' means targets that are reactive or explosive in nature and creates a big bang and/or a cloud of smoke.
- 5.9 'Factory Mutual' (FM) is the independent testing arm of the international insurance carrier, FM Global. FM approvals use scientific research and testing to make sure products conform to the highest standards for safety and property loss prevention.
- 5.10 'Firearms' means a weapon that launches one or more projectiles at a high velocity through the confined burning of a propellant.
- 5.11 'Fireworks' means any combustion or device consisting of a combination of explosives and combustible, detonated to generate colored lights, model rockets, pyrotechnic displays, smoke, and noise for amusement or entertainment purposes.
- 5.12 'Flue' means a pipe, tube, channel, duct or passage through which hot air, gas, steam, smoke or fire may pass, such as chimney, stovepipe or stack.
- 5.13 'LPG' - LPG is a type of fuel consisting of hydrocarbon gases in liquid form. LPG is an abbreviation for 'liquefied petroleum gas.'
- 5.14 '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 to include the use of fire for the purposes of weed/debris abatement.

- 5.15 'Outdoor Fireplace/ Commercial Smoker' means devices that have been manufactured and or built to current, approved and tested standards (UL or FM listed or equivalent) or to approved building codes.
- 5.16 'Recreational Fire/Campfire' 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. Recreational fires shall not be conducted within 25 feet (7620 mm) of a structure or combustible material.
- 5.17 '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.
- 5.18 'Special Event' means a one-time or infrequently occurring event outside normal programs or activities of the sponsoring or organizing body.
- 5.19 'Underwriter Laboratories' (UL) is a global safety science company, and the largest and oldest independent testing laboratory in the United States. Underwriters Laboratories tests the latest products and technologies for safety before they are marketed around the world.

**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 In it 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 Department, or the Arizona Department of Environmental Quality pursuant to Title 49, Chapter 3 of the Arizona Revised Statutes.

During "Red Flag Warning" conditions, as posted by the National Weather Service, no open outdoor fires, campfires, charcoal fires, agricultural burning or outdoor smoking are permitted on either public or private property within the unincorporated areas of the affected zone(s).

- 6.2 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 exempted activity.

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

- 6.2.2 Any fire set or permitted by any public official 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 or the control of an active wildfire.
- 6.2.3 Fires set or permitted by authority of the director of the Arizona Department of Agriculture or by Apache County Agricultural agents for the purpose of disease and pest prevention.
- 6.2.4 Fire authorized by special permit issued by the Emergency Management Director/Manager or Fire Departments/Districts.
- 6.2.5 After coordination with the Emergency Management Director/Manager, fires set by or permitted by the federal government or any of its department, 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.
- 6.2.6 Fires permitted by any rule or regulation adopted pursuant to Title 49, Chapter 3, Article 3 of the Arizona Revised Statutes, by any special 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.
- 6.2.7 Fires permitted by Local Fire Chiefs within their jurisdiction.

**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, agricultural burning or outdoor smoking are permitted on either public or private property within the unincorporated areas 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 Unless otherwise provided by law, 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- Minimal**

The following acts are prohibited until further notice:

1. Building, maintaining, attending, or using a fire or campfire unless noted in the exemptions below.
2. Smoking outside of designated areas.
3. Use of any and all fireworks.
4. Use of explosive targets.
5. Use of tracer round ammunition.

**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. A person who commits an act in violation of this chapter that results in an appropriate emergency response or investigation and who is convicted of the violation may be liable for the expenses that are incurred incident to the emergency response and the investigation of the commission of the offense in accordance with *Arizona Revised Statute 13-1709; Emergency response and investigation costs; civil liability.*

1. Persons obtaining a written "Special Use Permit" from the "Authority Having Jurisdiction" that specifically authorizes the otherwise prohibited act.
2. 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 for 3 feet in diameter around the device. Permissible items include propane fire rings, pellet stoves/smokers/grills that have UL or FM approval and are a contained unit. A person of appropriate age must always maintain a presence when in operation.
3. Smoking within enclosed buildings and inside vehicles is allowed. Smoking may also be allowed in or on porches, carports, garages, parking lots and other areas or properties which are cleared of all combustible materials so long as the smoking does not create a substantial risk of fire and all smoking materials are properly extinguished and disposed of. At no time is it allowed to discard lit cigarettes, cigars, or other smoking materials from a vehicle, or from ones' possession in a public place (ARS 13-1603.a.1).

4. Persons using a device solely fueled by liquid petroleum or LPG fuels that can be turned on and off. Such devices with UL and/or FM approval 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. A person of appropriate age must always maintain a presence with the device when in operation.
5. Persons conducting activities in those designated areas where the activity is specifically authorized by written posted notice.
6. Emergency repairs of public utilities and railroads as per attached conditions.
7. 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.
8. All land within a city boundary is exempted unless stated by city ordinance.
9. Other exemptions unique to each "Authority Having Jurisdiction".

### **STAGE II: Fire Restrictions- Moderate to Severe**

The following acts are prohibited until further notice:

1. Building maintaining, attending, or using a fire, campfire, charcoal, coal, or wood including fires in developed campgrounds or improved sites.
2. Smoking outside of designated areas.
3. Outdoor Mechanical and Industrial Prohibitions:
  - a. Operating any electric device or internal combustion engine in the course of mechanical or industrial operations that would produce open flames or sparks.
  - 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. Discharging a firearm.
7. Use of explosive targets.
8. 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. A person who commits an act in violation of this chapter that results in an appropriate emergency response or investigation and who is convicted of the violation may be liable for the expenses that are incurred incident to the emergency response and the investigation of the commission of the offense in accordance with *Arizona Revised Statute 13-1709; Emergency response and investigation costs; civil liability.*

1. Persons obtaining a written "Special Use Permit" from the "Authority Having Jurisdiction" that specifically authorizes the otherwise prohibited act.
2. Fires used only for the cooking of food or for providing warmth for human beings in an area that is designated for that purpose and is barren or cleared of all debris for 3 feet in diameter around the device. Permissible items include propane fire rings, pellet

stoves/smokers/grills that have UL or FM approval and are a contained unit. A person of appropriate age must always maintain a presence when in operation.

3. Smoking within enclosed buildings and inside vehicles is allowed. Smoking may also be allowed in or on porches, carports, garages, parking lots and other areas or properties which are cleared of all combustible materials so long as the smoking does not create a substantial risk of fire and all smoking materials are properly extinguished and disposed of. At no time is it allowed to discard lit cigarettes, cigars, or other smoking materials from a vehicle, or from ones' possession in a public place (ARS 13-1603.a.1).
4. Industrial operations where specific operations and exemptions are identified, and mitigation measures are implemented as outlined in an agency plan.
5. Persons operating equipment with UL and/or FM approval and spark arrestors such as chainsaws (electric or internal combustion engine), lawnmowers and landscaping equipment in maintained, landscaped space.
6. 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.
7. Persons using a device fueled solely by liquid petroleum or LPG fuels that can be turned on and off. Such devices with a UL and/or FM approval 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. A person of appropriate age must always be present with the device when in operation.
8. Operating generators with a UL and/or FM approval and an approved spark arresting device within an area that is barren or cleared of all overhead and surrounding flammable materials within three feet of the generator.
9. 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.
10. Emergency repair of public utilities and railroads and mitigation measures are implemented as outlined in an agency plan.
11. Persons conducting activities in those designated areas where the activity is specifically authorized by written posted notice.
12. 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.
13. All land within a city boundary is exempted unless otherwise stated by city ordinance.
14. Discharging firearms is permissible while engaged in a lawful hunt pursuant to state, federal or tribal laws or regulations or in an agency designated shooting range.
15. Other exemptions unique to each 'Authority Having Jurisdiction'.

## **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 an authorized public, federal, state, or local official 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 Fires permitted by the Emergency Management Director/ Manager 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.
- 8.5 Fire permitted by the Local Fire Chiefs within their jurisdiction.

## **9. FAILURE TO OBEY LAWFUL ORDER**

The failure to obey a lawful order by the Emergency Management Director/Manager, a certified peace officer, a firefighter or other officer of a Fire District/Fire Department, or uniformed personnel or certified peace officer of the USFS 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/Manager or designee, any certified peace officer acting within the officer's area of jurisdiction, a firefighter or other officer of Fire District/Fire Department acting within the authorized officials' 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) or 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.

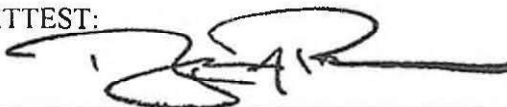
10.3 Criminal Violation. When a person convicted of a violation of this Ordinance has previously been charged with a violation of this Ordinance during the preceding 12 months, or has refused to obey the lawful order of an officer as set forth in Section 9, the person shall be deemed to have committed a Class 2 misdemeanor and shall be subject to a fine of not less than two hundred and fifty dollars (\$250) or more than seven hundred and fifty dollars (\$750) for each violation or count, plus surcharges, fees and 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.

10.4 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 Supervisor at St. John's, Arizona on July 2, 2019.

  
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Apache County Board of Supervisors  
Joe Shirley Jr., Board Chairman

7/2/19  
Date

ATTEST:  
  
\_\_\_\_\_  
Ryan Patterson  
County Manager

7/2/19  
Date

