

# ORDINANCE NO. \_\_\_\_\_



## OUTDOOR FIRE ORDINANCE

**An ordinance of the Board of Supervisors of Apache County, Arizona, repealing Ordinance No. \_\_\_\_\_ (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Ordinance No. 2003-21, the Open Outdoor Fire Ordinance, is hereby repealed in its entirety.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 Director deems appropriate, with the U.S. Forest Service (“USFS”), ") Bureau of land Management, local Fire Districts, Tribal agencies, 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](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 Component (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 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 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 of 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 level 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 “Fire Arms” 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 Weather Service to inform the County and other agencies of the imminent or actual occurrence of extreme fire danger or extreme fire conditions. This is actually determined by the National Weather Service.

## **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 farming 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 or the control of an active wildfire.
- 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** 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 by permit or permission.

## 7. **EMERGENCY FIRE RESTRICTIONS**

In addition to the 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 some or all of the following additional emergency restrictions, whereby it shall be unlawful to:
  - 7.2.1 Burn, start, ignite, build, attend, have, possess, maintain or use any open outdoor fire.
  - 7.2.2 Burn, start, ignite, build, attend, have, possess, maintain or use flammable or combustible materials for the purpose of any open outdoor fire.
  - 7.2.3 Engage in smoking or smoke, burn, start, ignite, build, attend, have, possess, burning, smoldering or lit cigarettes, cigars, cigarillos, smoking pipes or other smoking products containing tobacco or other plant material. Provided, however, that outdoor cooking on stoves or grills which use only propane, butane or other gases shall not be prohibited under this Section 7.2.

- 7.3** The Board of Supervisors may exempt or modify emergency fire restrictions, including but not limited to:

**EXEMPTIONS:**

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

- 7.3.1** Allowing smoking within enclosed buildings and inside vehicles. Smoking may also be allowed in or on porches, carports, garages, parking lots and other areas on properties which are cleared of all combustible materials so long as the smoking does not create a substantial risk of fire danger.
- 7.3.2** Placing restrictions on open outdoor fires, campfires or charcoal fires which will ensure the safety of such fires.

**STAGE I: Fire Restrictions**

The following acts are prohibited until further notice:

1. Building, maintaining, attending, or using a fire or campfire, charcoal, coal or wood stove 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.

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. Persons with a written permit that specifically authorizes the otherwise prohibited act.
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. 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 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. Discharging a firearm while engaged in a lawful hunt pursuant to state, federal, or tribal laws and regulations. Discharging a firearm for target practice or other form of recreation.
4. Mechanical and Industrial Prohibitions
  - a) Operating any internal combustion engine other than exemption 5 below.
  - b) Welding, or operating acetylene or other torch with open flame.
  - c) Using an explosive.
5. Operating motorized vehicles off designated roads and trails.
6. Use of any and all fireworks.

### **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 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.
4. 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.
5. 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.
6. Emergency repair of public utilities and railroads and mitigation measures are implemented as outlined in an agency plan.
7. Persons conducting activities in those designated areas where the activity is specifically authorized by written posted notice.
8. Any Federal, State, or local officer, or member of an organized rescue or firefighting force in the performance of an official duty.
9. All land within a town boundary is exempted unless otherwise stated by town ordinance.
10. Discharging of firearms is allowed on agency designated shooting ranges.

### **STAGE III- Extreme Fire Danger**

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.

#### **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. 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** 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 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** Fires permitted by 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 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 restitution for any medical treatment required 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 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 \_\_\_\_\_

**APACHE COUNTY BOARD OF SUPERVISORS**

By:

\_\_\_\_\_  
Dr. Joe Shirley, Jr.  
Chairman

ATTEST:

\_\_\_\_\_  
Ryan Patterson,  
Interim County Manager  
Clerk of the Board of Supervisors