

ORDINANCE No. 2022-04
AN ORDINANCE OF THE BOARD OF SUPERVISORS FOR COCONINO COUNTY,
ARIZONA, ESTABLISHING PROVISIONS FOR THE ENFORCEABILITY OF
RESTRICTIONS UPON WILDFIRE-RISK ACTIVITIES IN ITS JURISDICTION;
AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF EMERGENCY
MANAGEMENT TO IMPLEMENT THE SAME; AND REPEALING COCONINO COUNTY
ORDINANCE No. 2021-02

I. TITLE

This Ordinance shall be known as the Coconino County Wildfire Defense Ordinance.

II. PURPOSE

The purpose of The Coconino County Wildfire Defense Ordinance is to save lives; preserve and protect the public health, safety, welfare, comfort, and convenience of the citizens of, and visitors to, Coconino County; to preserve and protect private property and public infrastructure; to preserve the natural beauty of the Area of Jurisdiction; to coordinate wildfire restrictions in and amongst the various jurisdictions within Coconino County-pursuant to Section 11-251(63) of the Arizona Revised Statutes.

The entirety of this Ordinance shall apply to the area of jurisdiction as defined below.

III. DEFINITIONS

1. **“ADEQUATE FIRE SUPPRESSION EQUIPMENT”** is defined as personnel, tools, water, or other equipment suitable for the suppression of fire.
2. **“AREA OF JURISDICTION”** has the same meaning as provided for in Arizona Revised Statute § 11-801(2), namely that part of Coconino County outside the corporate limits of any municipality, federally owned land, or any federally recognized tribe in accordance with 25 Code of Federal Regulations part 83.
3. **“BOARD”** means the Coconino County Board of Supervisors.
4. **“CAMPFIRE”** means an open outdoor fire, which is used only for the cooking of food or providing of human warmth or for recreational purposes.
5. **“COMBUSTION”** means a chemical process of oxidation that occurs at a rate fast enough to produce heat and usually light in the form of a glow or flames.
6. **“DEVELOPED RECREATION SITE”** means an area which has been improved or developed for recreation.
7. **“DIRECTOR”** means the appointed Director, or his/her designee, of the Coconino County Department of Emergency Management.
8. **“EXEMPTION”** means a limited set of exclusions from the prohibited activities set forth in Section IV below. Exemption is a defense to a charge of a violation of this Ordinance. In the event of an ambiguity or uncertainty as to the meaning or application of

an exemption, the narrowest interpretation as shall further the prevention of wildfire and promote the public health, safety and welfare shall prevail.

9. **“FIRE BAN”** means a prohibition upon open fires, campfires, fireworks, and combustion when so declared by the Board of Supervisors.
10. **“FIRE STAGE”** means a category of exemptions commensurate with the degree of least to most wildfire risk, and as further specified herein.
11. **“FIREWORKS”** means any combustible or explosive composition, substance or combination of substances, whether deployed on the ground or in the air or held in place by an individual or any device, whose purpose is a visible or audible effect brought about by combustion, explosion, detonation, or deflagration, and that is a consumer firework or display firework as further defined in Arizona Revised Statute § 36-1601.
12. **“FIRE DISTRICT”** as described in Arizona Revised Statute 48 Chapter 5.
13. **“PERMISSIBLE FIREWORKS”** means the types of permissible consumer fireworks as defined in Arizona Revised Statutes § 36-1601.
14. **“OPEN FIRE”** means a combustion event or fire where the products of combustion are emitted directly into the ambient air without the interception of a regulated fire arresting and heat controlling device.
15. **“ZONE”** means a specific geographical area/zone that is outlined by using existing County district boundaries, fixed and unchanging natural landmarks, major roadways, municipal or community boundaries or other highly visible, easily mapped (illustrated) and communicated boundaries.

IV. PROHIBITED ACTIVITIES

During implemented Fire Stages or a Fire Ban, it shall be unlawful for one or more individuals, a corporation, limited liability company, partnership, association, or other business or commercial entity to, either directly or indirectly:

1. Initiate, facilitate, maintain, cause, or contribute to a campfire, an outdoor open fire, or use of fireworks; or
2. Knowingly engage in an activity likely to result in combustion outdoors.

V. CLASSIFICATION

Any person, firm, association, partnership, corporation, or other legal entity who is convicted of a violation of this Ordinance is guilty of a class (1) misdemeanor and shall be subject to a fine not to exceed \$2,500.00 and/or a term of imprisonment not to exceed six (6) months.

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 Statutes §13-1709;

Emergency response and investigation costs: civil liability.

Any peace officer in the State of Arizona may enforce the provisions of this Ordinance.

VI. FAILURE TO OBEY AND CONTINUING VIOLATIONS

Each calendar day within which a violation occurs or continues shall be deemed a separate offense. The failure to obey a lawful order by any peace officer of this State shall constitute a distinct and separate violation of this Ordinance.

VII. WRITTEN VARIANCE

Individuals may seek a written variance to engage in activity prohibited by this Ordinance. Such variance must be issued by the specific fire district or fire authority in the district where the activity is to be performed, and must specifically describe the activity, location, and time at which the variance applies. For activities during a stage of restriction *outside* of a fire district or other jurisdictional fire authority, a variance request can be submitted to the Coconino County Emergency Management Director. If, upon review by the DIRECTOR, regional fire weather conditions favor the authorization of a variance, a variance may be issued specifically describing the activity, location, and time at which the variance applies.

Adequate fire suppression equipment and personnel, as indicated by the variance applicant, must be on site and readily available. Reasonable and prudent measures should be taken to mitigate fire risks, such as the removal of receptive fuels from the immediate area of activity and monitoring of changing weather conditions to include high winds.

In the event of changing weather conditions not favorable for safe activity and the prevention of fire or a change in Coconino County stage restrictions, the variance holder shall suspend the activity. The variance holder is responsible for ensuring that they are always aware of the existing weather conditions and current stage restrictions. Coconino County publishes stage alerts on www.coconino.az.gov/emergencymanagement. At the Director's discretion, a variance may be rescinded for weather conditions that have developed or under other circumstances. Variances are issued for the current fire stage. If the stage should change, the variance shall become automatically void. The variance holder may re-apply for a new variance under the new fire stage.

No variances will be issued under Stage 3 Restrictions.

A written variance issued according to this Ordinance does not relieve any person(s) or organization(s) from any civil or criminal liability outside the authority of this Ordinance associated with the activity and the potential for fire because of such activity.

VIII. FIRE STAGE RESTRICTIONS

Coconino County uses fire restrictions to help prevent unwanted, human-caused fires and to limit the exposure of visitors during periods of potentially dangerous fire conditions. Implementation of fire restrictions occurs based on a combination of factors that are carefully measured. Criteria used to determine when to implement restrictions includes things such as current and predicted weather, fuel moisture, fire activity levels, and available firefighting resources.

There are three stages of fire restrictions, which become more restrictive as the stages progress from Stage 1 to Stage 3. The following is a general explanation of the restrictions in

each Stage, but please check the Coconino County website for the latest details on specific fire restrictions.

A. STAGE ONE:

During Stage 1, the following is prohibited at all times:

1. Igniting, building, maintaining, or using a fire, including charcoal and briquettes.
2. Use of liquid fuels and/or liquid petroleum gas (“LPG”) fire rings.
3. Smoking.
4. Use of explosive targets and tracer round ammunition.

Exemptions during Stage 1:

1. Using a stove, grill, fire ring, or other manufactured device that is solely fueled by pressurized liquid petroleum or pressurized liquid petroleum gas (LPG) fuels that can be turned on and turned off (e.g., a gas grill) when used in an area that is barren or cleared of overhead and surrounding combustible materials and vegetation.
2. Having a campfire within a developed recreation site.
3. Smoking within an enclosed vehicle, building, or developed recreation site free of combustible materials and vegetation.
4. Persons with a written variance specifically exempting them from the effect of this Order.
5. For emergency repair of public utilities and railroads and other health and safety mitigation measures when operated by a public utility or railroad and implemented in accordance with an approved agency plan.
6. By any Federal, State, or local officer or member of an organized rescue or firefighting entity in the performance of an official duty.
7. By persons operating internal combustion engines with spark arresting devices when the use is for common household-only activities such as landscaping and property maintenance and repair.
8. By persons operating generators or pumps with an approved spark arresting device in an area that is barren or cleared of all overhead and surrounding combustible materials within three (3) feet of the device.

An exemption does not absolve any person(s) or organization(s) from liability or responsibility for any fire started by the exempted activity. In the event of a Fire Stage restriction increase, any variance issued during a Stage 1 fire restriction is automatically rendered void unless a written variance is issued by the Director for the higher Stage level.

B. STAGE TWO:

During Stage 2, the following is prohibited at all times:

1. Igniting, building, maintaining, or using a fire, including charcoal and briquettes.
2. Use of liquid fuels and/or liquid petroleum gas (“LPG”) fire rings.

3. Smoking within an enclosed vehicle only.
4. Use of explosive targets and tracer round ammunition.
5. Operating motorized vehicles off designated trails and roads.
6. Outdoor mechanical and industrial operations such as welding and use of acetylene.

Exemptions during Stage 2:

1. Persons with a written variance specifically exempting them from the effect of this Order.
2. Persons using a stove or grill that is solely fueled by pressurized liquid petroleum or pressurized LPG fuels that can be turned on and turned off (e.g., a gas grill) when used in an area that is barren or cleared of overhead and surrounding combustible materials and vegetation.
3. Persons operating generators with an approved spark arresting device in an area that is barren or cleared of all overhead and surrounding combustible materials within three (3) feet of the generator.
4. Smoking within an enclosed vehicle or building.
5. Any Federal, State, or local officer, or member of an organized rescue or firefighting force in the performance of official duty.
6. For emergency repair of public utilities and railroads and other health and safety mitigation measures when operated by a public utility or railroad and implemented in accordance with an approved agency plan.
7. By persons operating the following with written variance from an authorized governmental agency:
 - a. internal combustion engines, mechanical or industrial operations that may produce open flames and sparks but containing appropriate spark arresting devices;
 - b. welding or operating acetylene or other torch with open flame in an area that is free of combustible materials and vegetation; and
 - c. explosives.

An exemption does not absolve any person(s) or organization(s) from liability or responsibility for any fire started by the exempted activity. In the event of a Fire Stage restriction increase, a variance issued during a Stage 2 fire restriction is automatically rendered void.

C. STAGE THREE:

All combustion, fire, and devices that produce an open flame are prohibited at all times during a Stage 3 fire restriction. All variances issued during a Stage 1 or 2 fire restriction are automatically rendered void during a Stage 3 fire restriction.

No variances will be issued during a Stage 3 fire restriction.

Exemptions during Stage 3:

1. Smoking within an enclosed vehicle or building.

2. For emergency repair of public utilities and railroads and other health and safety mitigation measures when operated by a public utility or railroad and implemented in accordance with an approved agency plan.
3. By any Federal, State, or local officer or member of an organized rescue or firefighting entity in the performance of an official duty.

D. PERMISSIBLE CONSUMER FIREWORKS:

Pursuant to A.R.S. § 36-1606, the State of Arizona has declared that the regulation of fireworks is a matter of statewide concern and, as a result thereof, if no federal or state agency stage one or higher fire restrictions are in place, permissible consumer fireworks may be used during the periods of June 24 through July 6 and December 24 through January 3 of each year.

If no federal or state agency stage one or higher fire restrictions are in place, the use of permissible consumer fireworks during the periods of June 24 through July 6 and December 10 through January 3 of each year is an affirmative defense to a charge that a violation of the fire ban has occurred or is occurring.

Pursuant to A.R.S. § 36-1606(A)(2), if a federal or state agency has implemented a stage one or higher fire restrictions, the use of permissible consumer fireworks is prohibited on all dates. Any use of permissible consumer fireworks during such time that both this Ordinance and federal or state agency stage one or higher fire restrictions are in place is a violation of this Ordinance.

IX. DETERMINATION OF CONDITIONS WARRANTING A FIRE BAN

The Director shall be responsible for determining when conditions are such that a fire ban is warranted. The Director shall base his determination upon such factors as may be deemed relevant by the Director including, but not limited to, the imposition of fire restrictions within the area of jurisdiction by federal, state, and local agencies having the authority to impose such restrictions. Upon a determination that conditions warrant a fire ban the Director shall submit to the Board of Supervisors such report with data and exhibits specifying: (a) the basis for the determination that a fire ban is warranted; (b) a recommendation as to which fire stage is appropriate for the prevailing conditions; and (c) whether conditions warrant a declaration of emergency.

The Director, when offering the determination required under this Ordinance, will also determine whether any Zone within the area of jurisdiction may be exempted from application of this Ordinance. The Director shall specifically define the Zone(s) that is/are to be exempted. In formulating this determination, the Director will consult with necessary subject matter experts, effected population officials, law enforcement and any other party necessary to appropriately define any Zone(s) to be exempted from this Ordinance. The concurring opinions, opposing arguments and other relevant points will be included in the Director's recommendation for county leadership consideration.

The Director shall also ensure an effective public awareness effort to ensure compliance and to facilitate enforcement efforts are applied to an educated public. This campaign will include comprehensive mapping to better illustrate any Zone exemption(s).

There may be more than one Zone exemption enacted at any one time.

X. ENACTMENT OF FIRE BAN AND NOTICE

If, following the report of the Director, the Board of Supervisors by majority vote determines that a fire ban is warranted the Board may issue an Order enacting a fire ban. The Order shall specify the effective date of the fire ban, any Zones that are exempted, and whether conditions warrant a declaration of emergency. Immediately upon enactment of a fire ban the Board of Supervisors shall cause public notification of the fire ban.

XI. PROGRESSION FROM FIRE STAGE TO FIRE STAGE; ALTERATION OF ZONE EXEMPTIONS

During the period of any fire stage, the Director shall have authority to change the fire stage commensurate with the risk of wildfire in the area of jurisdiction. The Director is also authorized to add, remove, or amend any Zone exemptions to the fire ban Order. Such changes to fire stages or Zone exemptions are subject to the following procedure: Prior to making authorized changes, the Director shall conduct the same consultations as in the determination of fire stages. The Director shall prepare and submit a report with supporting exhibits as deemed necessary and consult with the Chairperson and Vice Chairperson of the Board of Supervisors, the County Manager, and the County Sheriff. Upon determination that the fire stage will be adjusted or a Zone exemption will be added, removed, or amended, the Director shall specify the effective date of the change and shall cause public notification of the fire stage designation.

Nothing herein prevents the Board of Supervisors from convening a meeting, seeking a report from the Director, and taking action in the event the Board believes a need exists for a fire stage, fire ban, or Zone exemption change.

XII. TERMINATION OF FIRE BAN

Unless otherwise specified in the Order enacting the fire ban, the Order shall expire on the date that the Director issues a written determination that conditions warranting the fire ban no longer exist; or alternatively, on the date that the written determination specifies as an expiration date if within thirty (30) days of the written determination. Thereafter, the Director may rescind his determination if wildfire conditions worsen such that the fire ban Order should remain in effect.

Nothing herein prevents the Board of Supervisors from convening a meeting, seeking a report from the Director, and taking action in the event the Board believes a need exists for termination of the fire ban.

All determinations of the Director recommending a fire ban, altering the fire stages or Zone exemptions, or recommending termination shall be in writing and an original of the same shall be filed with the Clerk of the Board of Supervisors.

XIII. EFFECTIVE DATE

Subject to the citizens' right of referendum, this Ordinance shall become effective upon adoption by the Board of Supervisors on the date given below and upon the filing of a copy of this Ordinance with the Clerk of the Board of Supervisors.

XIV. REPEAL OF ORDINANCE 2021-02

Upon the effective date of this the Wildfire Defense Ordinance, the Coconino County Ordinance No. 2021-02 dated January 5, 2021, is hereby repealed.

SO ORDAINED by the Coconino County Board of Supervisors on April 26, 2022.

AYES:

NOS:

ABSENT:

COCONINO COUNTY BOARD OF SUPERVISORS

By _____
Patrice Horstman, Chair

ATTEST:

Lindsay Daley, Clerk of the Board of Supervisors

APPROVED AS TO FORM:

Yvonne Vieau, Deputy County Attorney