ORDINANCE No. 2015-03

AN ORDINANCE OF THE BOARD OF SUPERVISORS FOR COCONINO COUNTY, ARIZONA, ESTABLISHING PROVISIONS FOR THE ENFORCEABILITY OF RESTRICTIONS UPON WILDFIRE-RISK ACTIVITIES IN THE AREA OF ITS JURISDICTION; AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF EMERGENCY MANAGEMENT TO IMPLEMENT THE SAME; AND REPEALING COCONINO COUNTY ORDINANCE No. 2000-09.

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; to avoid economic interruptions, personal and business displacement, and prolonged and expensive recovery efforts that prevail after wildfire; to mitigate risk of harm to County operations; to avoid detrimental impact to long-term fiscal planning that the County has previously experienced in response to the consequences of wildfire; and to prescribe those conditions under which combustion, campfires, open fires, and fire catalysts shall be tolerated during periods of potential wildfire risk.

III. DEFINITIONS

1. **"AREA OF JURISDICTION"** has the same meaning as provided for in Ariz.Rev.Stat. §11-801(2); namely that part of Coconino County outside the corporate limits of any municipality.

2. **"BOARD"** means the Coconino County Board of Supervisors.

3. **"CAMPFIRE"** means an open outdoor fire which is used only for the cooking of food or providing of human warmth or for recreational purposes.

4. **"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.

5. **"DIRECTOR"** means the appointed Director of the Coconino County Department of Emergency Management.

6. **"EXEMPTION"** means a limited set of exclusions from the PROHIBITED ACTIVITES 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.

7. **"FIRE BAN"** means a prohibition upon OPEN FIRES, CAMPFIRES, FIREWORKS, and COMBUSTION when so declared by the Board of Supervisors.

8. **"FIRE STAGE"** means a category of EXEMPTION commensurate with the degree of least to most wildfire risk, and as further specified herein.

9. **"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 Ariz.Rev.Stat. §36-1601.

10. **"PERMISSIBLE FIREWORKS"** means the types of permissible consumer fireworks as defined in Ariz.Rev.Stat. §36-1601.

11. **"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.

IV. PROHIBITED ACTIVITIES

It shall be unlawful, in the AREA OF JURISDICTION, for one or more individuals, a corporation, limited liability company, partnership, association, or other business or commercial entity to, either directly or indirectly:

A. Initiate, facilitate, maintain, cause or contribute to a CAMPFIRE, an OPEN FIRE, or use of FIREWORKS ; or
B. Knowingly engage in an activity likely to result in COMBUSTION ;

during a FIRE BAN.

V. CLASSIFICATION

A violation of this Ordinance shall be a class one (1) misdemeanor punishable by imprisonment for a period of up to six months and/or a fine of $2,500.00. Law enforcement officers shall have the authority to issue a notice to appear under the same conditions and procedures as set forth in A.R.S. §13-3903 for a violation of this ordinance. Any deputized or cross-deputized peace officer of this State 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 a deputized or cross-deputized peace officer of this State shall constitute a distinct and separate violation of this Ordinance.

VII. FIRE STAGE EXEMPTIONS TO THE FIRE BAN

There are hereby established three stages of EXEMPTIONS to prohibited activity. A FIRE STAGE EXEMPTION is a defense to a charge that a violation of the FIRE BAN has occurred or is occurring. Each stage of EXEMPTION from STAGE ONE to STAGE THREE describes a continuum of increasing fire restrictions by reducing the number of exemptions to the FIRE BAN.

A. STAGE ONE

A STAGE ONE EXEMPTION allows for COMBUSTION, OPEN FIRE, and CAMPFIRE only when used:

1. By persons with a written permit from a proper governmental authority that specifically authorizes the prohibited act.
2. For personal use of cigarette or other tobacco smoking medium when inside an enclosed vehicle or building, or in a developed recreational site in an area that is free of combustible materials and vegetation.
3. 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.
4. By any Federal, State or local officer or member of an organized rescue or firefighting entity in the performance of an official duty.
5. By persons whose OPEN FIRE is the result of a device fueled by liquid petroleum or LPG fuels that can be turned on and turned off (for example a gas grill) when used in an area that is free of combustible materials and vegetation..
6. By persons operating internal combustion engines in the course of mechanical or industrial operations that would produce open flames and sparks but containing appropriate spark arresting devices; those welding or operating acetylene or other torch with open flame in an area that is free of combustible

materials and vegetation; and those using explosives with written permission of an authorized governmental agency.

7. By persons operating motorized vehicles off designated roads and trails.
8. By persons operating electric generators or pumps with an approved spark arresting device within an enclosed vehicle or building in an area that is free of combustible materials and vegetation.
9. Persons engaged in industrial and ranching operations where specific operations and mitigation measures are identified in an operating plan.
10. For cooking of food or for providing warmth for human beings in an area designated by a governmental authority specifically for that purpose; for example a CAMPFIRE or OPEN FIRE in an established campground with fire-hosting amenities [grill, fire ring].

Unless allowed by an exception above, common prohibited activities include OPEN FIRE, CAMPFIRES, FIREWORKS, open smoking, and use of explosive targets and tracer round ammunition.

B. **STAGE TWO**

A STAGE TWO EXEMPTION allows for COMBUSTION, OPEN FIRE, and CAMPFIRE only when used:

1. By persons with a written permit from a proper governmental authority that specifically authorizes the prohibited act.
2. For personal use of cigarette or other tobacco smoking medium when used inside an enclosed vehicle or building only.
3. 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.
4. By any Federal, State or local officer or member of an organized rescue or firefighting entity in the performance of an official duty.
5. By persons whose OPEN FIRE is the result of a device fueled by liquid petroleum or LPG fuels that can be turned on and turned off (for example a gas grill) when used in an area that is free of combustible materials and vegetation.
6. 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.
7. By persons operating electric generators or pumps with an approved spark arresting device within an enclosed vehicle or building in an area that is free of combustible materials and vegetation.
8. Persons engaged in industrial and ranching operations where specific operations and mitigation measures are identified in an operating plan.

Unless allowed by an exception above, in addition to STAGE ONE common prohibited activities, prohibitions now include all OPEN FIRE, CAMPFIRES, open smoking, outdoor mechanical and industrial operations such as welding and use of acetylene, and operating motorized vehicles off designated trails and roads.

C. **STAGE THREE**

A STAGE THREE EXEMPTION allows for COMBUSTION, OPEN FIRE, and CAMPFIRE only when used:

1. By persons with a written permit from a proper governmental authority that specifically authorizes the prohibited act.
2. For personal use of cigarette or other tobacco smoking medium when used inside an enclosed vehicle or building only.
3. 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.
4. By any Federal, State or local officer or member of an organized rescue or firefighting entity in the performance of an official duty.

Unless allowed by an exception above, there are no outdoor activities that allow for OPEN FIRE, CAMPFIRES, FIREWORKS, and COMBUSTION events.

D. **PERMISSIBLE CONSUMER FIREWORKS**.

Notwithstanding the FIRE STAGE EXEMPTIONS above, the State of Arizona has declared that the regulation of FIREWORKS is a matter of statewide concern and, as a result thereof, PERMISSIBLE CONSUMER FIREWORKS may be used during the periods of June 24 through July 6 and December 24 through January 3 of each year. 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.

VIII. 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.

IX. ENACTMENT OF FIRE BAN AND FIRE STAGE; 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, the FIRE STAGE that shall be enacted, 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 restriction.

X. PROGRESSION FROM FIRE STAGE TO FIRE STAGE

During the period of FIRE BAN the DIRECTOR shall have authority to change the FIRE STAGE of EXEMPTIONS commensurate with the risk of wildfire in the AREA OF JURISDICTION; subject to the following procedure. Prior to changing the FIRE STAGE of EXEMPTIONS the DIRECTOR shall abide by the same consultations as in the determination of FIRE BAN. 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 the DIRECTOR shall specify the effective date of the change and shall cause public notification of the FIRE BAN restriction.

Nothing herein prevents the Board of Supervisors from convening a meeting and seeking a report from the DIRECTOR, and taking action in the event the Board should believe a need exists for a progression in FIRE STAGE.

XI. 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 first 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 should remain in effect.

Nothing herein prevents the Board of Supervisors from convening a meeting and seeking a report from the DIRECTOR, and taking action in the event the Board should believe a need exists for termination of the FIRE BAN.

All determinations of the DIRECTOR recommending a FIRE BAN, altering the FIRE STAGES, or recommending termination, shall be in writing and an original of the same shall be filed with the Clerk of the Board of Supervisors.

XII. 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.

XIII. REPEAL OF ORDINANCE 2000-09

Upon the effective date of this the Wildfire Defense Ordinance, the Coconino County Ordinance No. 2000-09 dated June 30, 2000, is hereby repealed.

SO ORDAINED by the Coconino County Board of Supervisors on August 18, 2015.

COCONINO COUNTY BOARD OF SUPERVISORS

By _____

Art Babbott, Chairman

ATTEST:

_____

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND POWERS:

_____

Deputy County Attorney