

LEE COUNTY ORDINANCE NO. 18-09

AN ORDINANCE PROVIDING FOR THE EMERGENCY REGULATION OF OUTDOOR BURNING AND USE OF OTHER OUTDOOR IGNITION SOURCES DURING CONDITIONS OF EXTREME DROUGHT; PROVIDING FOR CONFLICTS OF LAW; SEVERABILITY; CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision and charter county of the State of Florida; and

WHEREAS, Lee County may experience, from time to time, severe drought conditions due to significant rainfall deficits; and

WHEREAS, severe and widespread drought conditions in combination with abnormally cold and dry wintertime weather conditions can result in severe wildfire threat and outbreaks; and

WHEREAS, wildfires pose a serious threat to the lives and property of the residents of and visitors to Lee County; and

WHEREAS, when such drought conditions occur, the public's health and safety may be best served by restricting the use of outdoor ignition sources to reduce the risk of wildfire outbreaks, except as provided herein, if certain defined weather and vegetative conditions are met; and

WHEREAS, Florida Statutes, Section 125.66 (3), provides authority for political subdivisions to enact emergency ordinances when it is determined that immediate enactment is necessary; and

WHEREAS, the Board finds it necessary to promulgate this ordinance to be implemented during emergency conditions in order to protect human and animal life and to avert the destruction of real and personal property that could result from wildfire outbreaks until severe drought conditions end.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA THAT:

SECTION 1. PURPOSE AND INTENT

This ordinance is applicable on an emergency basis as set out further herein to the unincorporated and incorporated areas of Lee County, however, incorporated areas of Lee County can opt into the terms of this ordinance based upon a formally adopted resolution within thirty (30) days of adoption of this ordinance by the Board of County Commissioners. The purpose of this ordinance is to limit fire hazards in Lee County on an emergency basis during periods and conditions of extreme drought by regulating the use of outdoor ignition sources in order to substantially reduce the risk of loss and damage to real and personal property.

This ordinance shall be applicable upon the Board declaring a State of Local Emergency by subsequent resolution. This ordinance is applicable when duly implemented on an emergency basis by County Resolution as stated above. This ordinance shall be suspended at all times when the Board of County Commissioners has not declared by resolution that a State of Local Emergency exists.

SECTION 2. APPLICABLE

The use of outdoor burning ignition sources (which includes campfires, bonfires, trash burning and other similar open incineration), is prohibited during the declared emergency when the following conditions are present;

- (a) ~~When the Division of Forestry's release of the KBDI indicates the mean value of the KBDI for Lee County meets or exceeds the lower values listed for the Severe Seasonal KBDI Classification for either the Winter or Spring seasons in the South Florida area, as shown in Exhibit A of this ordinance, indicating severe drought conditions~~When the mean Keetch-Byram Drought Index (KBDI) value reaches or exceeds 600 for Lee County; and
- (b) ~~The Long Term Palmer Drought Severity Index indicates the area is experiencing severe or extreme drought conditions~~When the County Manager or Designee, in consultation with Public Safety Director, the President of the Lee County Fire Chief's Association, the President of the Lee County Fire a representative of the Lee County Fire Chief's Associations and the Florida Forest

Service Caloosahatchee District Manager, both all-recommend suspension of such activities. Recommendations shall be made based on drought/weather models, indices, reports/forecasts, amount and extent of fire activity within the Caloosahatchee District, analysis of fire causes and resources expended on other fires,; and

- (c) ~~The U.S. Drought Monitor indicates the area is experiencing a widespread severe, extreme or exceptional drought conditions.~~

A prohibition may be implemented on the private use or discharge of any fireworks and/or sparklers as defined in Chapter 791 of the Florida Statutes, as it may be amended from time to time, or any other ignition source that may cause or have tendency to cause wildfires as defined in Section 590.015, Florida Statutes, as may be amended from time to time, based on an evaluation of the following models, indices, reports forecasts and/or other pertinent information:

- (a) The KBDI Index,
- (b) Short and long range weather forecasts such as the Long Term Palmer Drought Severity Index and the U.S. Drought Monitor,
- (c) Rainfall deficit for the area,
- (d) Fuel moisture readings,
- ~~(e) Fire Spread Index,~~
- ~~(f)(e)~~ The amount and extent of fire activity within the Caloosahatchee Forestry District, and
- ~~(g)(f)~~ Analysis of fire causes
- ~~(h)(g)~~ Resources expended on other fires

Conditions indicating a need to prohibit the use or discharge of fireworks, sparklers or any other ignition source will be based on the advice and recommendations to the Board from County Manager or Designee, in consultation with ~~and the President of the Fire~~ a representative of the Lee County Fire Chief's Association and, in coordination with the Florida Forest Service Caloosahatchee District Manager, 's Emergency Management Director and the Lee County Fire Chief's Association's President or (when the President is unavailable) Vice-President, or the Caloosahatchee District Manager.

Such prohibitions do not include state-authorized burns, authorized public fireworks displays permitted by Lee County and other government agencies and municipalities, and fireworks sales which are authorized by state law, including where the wholesale seller directly ships such

fireworks outside of Lee County, without the purchaser participating in any such shipment, except the purchaser may pay for the costs of shipping. Such prohibitions shall remain in effect until suspended as provided in Section 7.

SECTION 3. NOTICE

Lee County's ~~Division~~ Department of Public Safety will notify the public and media ~~by newspaper, radio, and/or television~~ of the applicability of this ordinance and any subsequent implementing resolutions.

SECTION 4. ENFORCEMENT

The sheriff and all other law enforcement officers as defined by general law and designated code enforcement officers shall, in conjunction with their duties, imposed by state law or local ordinance, enforce the provisions of this ordinance.

SECTION 5. VIOLATIONS

Violation of the terms of this ordinance or any duly approved County Resolution implementing same by any person, firm or corporation is punishable as provided for in Section 125.69(1), Florida Statutes. Any law enforcement officer issuing a Notice to Appear or making an arrest pursuant to a violation of this ordinance shall seize any incendiary device or ignition source being used in violation of this ordinance for the purpose of preserving evidence of the violation.

SECTION 6. SEVERABILITY

If any provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, it is the Board's intention that such portion will become a separate provision and will not affect the remaining provisions of the ordinance. The Board further declares that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION 7. SUSPENSION OF PROHIBITIONS

The prohibitions set forth above in Section 2 shall be suspended by the Board of County Commissioners when it declares a State of Local Emergency no longer exists. The Board may use the following sources to determine when the emergency no longer exists:

- (1) When the mean value of the KBDI issued by the Division of Forestry Florida Forest Service for Lee County falls to the Normal Seasonal KBDI Classification for Spring in the South Florida area, as shown in Exhibit A of this ordinance; or below 600.
- (2) The County Manager or Designee, in consultation with a representative of the Lee County Fire Chief's Association and the Florida Forest Service Caloosahatchee District Manager, recommend The Board of County Commissioners in consultation with the County's Emergency Management Director, and Lee County Fire Chief Association, or the Caloosahatchee District Manager, recommends suspension of such prohibitions. The Board of County Commissioners shall consider suspension of this ordinance and duly approved County Resolution at its regularly scheduled meetings of succeeding weeks when circumstances that created the severe drought conditions no longer exist.

However, should conditions contained in Section 2 above, which initially triggered such prohibitions, once again be present, then the Board may reinstate the prohibitions, consistent with Sections 2 and 3 above. The duration of the state of local emergency is limited to seven (7) days and may be extended, as necessary, in seven (7) day increments.

SECTION 8. SUNSET PROVISION

~~_____ This Ordinance and the provisions as provided herein shall sunset as of January 31, 2002.~~

SECTION 98. CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of other lawfully adopted ordinances or statutes, the most restrictive requirements will apply.

SECTION 109. CODIFICATION AND SCRIVENER'S ERRORS

The Board intends that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish

codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager or his designee, without the need for a public hearing.

SECTION 4410. MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION 4211. EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

Commissioner Mann made a motion to adopt the foregoing ordinance, seconded by Commissioner Manning. The vote was as follows:

John Manning	Aye
Cecil Pendergrass	Aye
Larry Kiker	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 6th day of March, 2018.

ATTEST:
LINDA DOGGETT, CLERK

BY: Missy Flint
Deputy Clerk



BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: [Signature]
Cecil Pendergrass, Chair

Commissioner Cecil L. Pendergrass
Lee County Board of County Commissioners
District 2

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

[Signature]
Office of the County Attorney



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

March 7, 2018

Honorable Linda Doggett
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Ms. Missy Flint

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Ordinance No. 18-09, which was filed in this office on March 7, 2018.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb