

ORDINANCE
NUMBER 2018-

AN EMERGENCY ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA REGULATING FIRE HAZARDS AND INCENDIARY DEVICES DURING DROUGHT CONDITIONS; PROVIDING FOR ENACTMENT AND AUTHORITY; JURISDICTION; IMPLEMENTATION; PROHIBITION; PUBLICATION; EXCEPTIONS AND PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, Section 125.66(3), Florida Statutes, authorizes the Board of County Commissioners to enact emergency ordinances and to waive the regular notice requirements for ordinances; and

WHEREAS, the Board of County Commissioners has the authority, under Chapter 791, Florida Statutes, to adopt rules and regulations concerning fireworks and, under Section 125.01(t), Florida Statutes, to adopt ordinances necessary for the exercise of its powers and to prescribe fines and penalties for the violation thereof; and

WHEREAS, Charlotte County's rainfall deficit for this year is several inches below normal conditions; and

WHEREAS, fire activity increases when the above conditions exist, and Charlotte County has already experienced numerous wild fires this year; and

WHEREAS, the Board of County Commissioners finds that enactment of an ordinance that provides a mechanism whereby the board can act quickly to implement appropriate restrictions to address rapidly changing drought conditions is in the best interest of the safety and welfare of the public in Charlotte County, and

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners
of Charlotte County, Florida:

1 Section 1. Enactment and authority.

2 This ordinance is enacted in accordance with and pursuant to the authority in
3 Chapters 125, 252, and 590 of the Florida Statutes.

4 Section 2. Jurisdiction.

5 The areas subject to this ordinance shall be all of unincorporated Charlotte
6 County, Florida and, to the extent it does not conflict with any applicable city ordinance,
7 shall also be effective within the City of Punta Gorda. Any law enforcement officer with
8 jurisdiction in the county shall have the authority to enforce the terms and provisions of
9 this ordinance.

10 Section 3. Implementation.

11 This ordinance is being adopted to minimize fire hazards in Charlotte County
12 during periods and conditions of extreme drought. This ordinance provides a
13 mechanism whereby the board can act quickly to implement appropriate restrictions to
14 address rapidly changing drought conditions. When the fire chief, or his or her designee,
15 determines that there exists a drought emergency and extreme risk of wild fires, the fire
16 chief or designee shall send written notification of such condition to the board. The fire
17 chief, in determining the existence of a drought emergency, shall take into consideration
18 certain factors including, but not limited to the following:

- 19 A. The Keetch/Byram Drought Index.
- 20 B. Discussions and consultation with the Division of State Forestry.
- 21 C. Consultation with other fire chiefs in the county and the region.

- 22 D. Study of meteorological conditions and climatological forecasts.
- 23 E. Whether the condition of the vegetation in the county is making it susceptible
24 to ignition.
- 25 F. Any actions taken by surrounding jurisdictions in response to extreme drought
26 conditions and fire hazards.
- 27 G. Any other condition or factor which could have a bearing on existing fire
28 hazard conditions and which reasonably prudent persons would normally rely
29 on to determine if a fire hazard condition exists.

30 In making such written presentation to the board, the fire chief will recommend
31 which prohibitions to impose and under what, if any, conditions open burning or the
32 discharge of fireworks or other incendiary devices will be allowed. The board may
33 impose any or all of the prohibitions as conditions warrant. When outdoor burning is
34 prohibited, such prohibition shall not be construed to apply to outdoor burning or land
35 clearing where the division of forestry has issued a permit. It is the intent of the board
36 not to prohibit the sale of fireworks except under the most exigent circumstances and
37 where drought conditions are so severe that an actual emergency exists. The use or
38 discharge of fireworks or incendiary devices may be prohibited or regulated even if the
39 drought conditions are at less than an emergency state. After receiving the
40 recommendation from the fire chief at a public meeting and considering all the evidence
41 before it, the board may adopt a resolution imposing appropriate restrictions or
42 prohibitions on open burning and discharge of fireworks or incendiary devices. The ban
43 shall take effect upon approval of the resolution of the board and shall remain in effect
44 until a like resolution repealing the burning ban is adopted by the board and upon

45 adoption of the repeal, the restrictions on burning or discharge of fireworks shall be
46 immediately lifted. Further, the board from time to time may amend any resolution by
47 changing, deleting, or modifying the provisions on burning and discharge of fireworks
48 depending on changes in the drought conditions.

49 Section 4. Prohibition.

50 The resolution imposing the ban on open burning or discharge of fireworks may
51 prohibit any or all of the following, depending on the recommendations of the fire chief
52 and the severity of the drought conditions. A resolution may make it unlawful for any
53 person to set fire or cause fire to be set to any forest, grassland, wild land, marshes,
54 vegetation, or land in an urban or rural area including those associated with agriculture,
55 silviculture, pile burning, or the building of campfires, bonfires, the burning of yard trash,
56 household garbage, refuse, or other debris in the unincorporated areas of Charlotte
57 County, unless otherwise provided herein. In addition, the resolution may prohibit any
58 person or entity from discharging, causing to be discharged, or the sale of any fireworks
59 or incendiary devices as defined in Chapter 791, Florida Statutes, as it may be
60 amended from time to time, that may cause or have a tendency to cause wild fires as
61 defined in Section 590.015, Florida Statutes. The resolution may also prohibit the
62 holding of any event including, but not limited to, events involving motorcycles,
63 automobiles, or any other vehicles or equipment that may cause hot exhaust gases or
64 high temperatures that may be generated by catalytic converters or other devices on
65 such vehicles in an open or uncontrolled area that is susceptible to wild fires. A ban on
66 the sale of fireworks shall only be imposed in the most exigent of circumstances and
67 when drought conditions are so severe as to constitute an extreme emergency.

68 Section 5. Publication.

69 Within a reasonable time after adopting a resolution pursuant to Section 3 above,
70 the board shall publish a quarter page advertisement, in a newspaper of general
71 circulation, not in the section reserved for legal advertisements, a summary of the
72 resolution imposing a burning and fireworks ban or repealing such ban. The
73 advertisement shall be published twice with the second advertisement appearing no
74 more than five (5) days after the first advertisement.

75 Section 6. Exceptions.

76 (a) Nothing herein contained or in any resolution adopted pursuant to this
77 ordinance shall be construed to prohibit lawful activities involving incendiary
78 devices, fire, or flame in controlled industrial or commercial processes for which
79 permits have been issued or, if no permit is issued, take place in a controlled
80 industrial or commercial environment and are part of the manufacturing or assembly
81 process that makes it unlikely that such incendiary flame or heat generating device
82 will cause any type of wild fire or be a danger outside of the premises where the
83 procedure or process is being conducted.

84 (b) Nothing herein shall prohibit residential outdoor cooking provided the same
85 is done on a suitable piece of equipment designed to contain the fire, flame, and
86 heat generated thereby.

87 (c) Outdoor cooking may be permissible in any public or private place provided
88 there are facilities designed for outdoor cooking which contain the heat, flames, or
89 fire otherwise generated by outdoor cooking.

90 (d) The provisions of this article shall not apply to any duly existing or
91 constituted fire department, fire district, or volunteer fire department conducting
92 training exercises involving open fire or flame solely for training purposes under
93 controlled conditions.

94 Section 7. Penalties

95 (a) *Penalties.* In accordance with the provisions of Charlotte County Code,
96 Section 1-1-8, violations of this Ordinance shall be prosecuted in the same
97 manner as misdemeanors are prosecuted. Such violations shall be
98 prosecuted in the name of the state in a court having jurisdiction of
99 misdemeanors by the prosecuting attorney thereof and upon conviction shall
100 be punished by a fine not to exceed \$500 or by imprisonment in the county
101 jail not to exceed 60 days, or by both such fine and imprisonment.

102 (b) *Confiscation.* In addition to the penalties provided in paragraph (a) of this
103 section, fireworks and sparklers that are being used or discharged in violation
104 of prohibitions enacted pursuant to this Ordinance are subject to confiscation
105 and disposal by law enforcement authorities, at the expense of the owner.

106 (c) *Injunctive Relief.* Charlotte County, in addition to any other remedies provided
107 by law, may seek in a court of competent jurisdiction an injunction against any
108 person or entity who uses or discharges fireworks and sparklers in violation of
109 this Ordinance. In the event Charlotte County prevails in a court action to
110 enjoin a violation of this Ordinance, it shall be entitled to recover its
111 reasonable attorney fees and court costs in addition to any other relief
112 granted.

113 Section 8. Compliance with State Law

114 The Board of County Commissioners finds that an emergency exists and enacts
115 this emergency Ordinance and waives the statutory notice requirements by a
116 four-fifths vote of the membership of the Board as required by Florida law.

117 Section 9. Severability

118 Should any paragraph, section, sentence or portion of this Ordinance be held
119 invalid or unconstitutional, such portion shall be severed from the remaining
120 portions hereof and such invalidity or unconstitutionality shall not be construed to
121 render invalid or unconstitutional the remaining provisions of this Ordinance.

122 Section 10. Effective Date.

123 This Ordinance shall be deemed to be filed and shall take effect when a copy has
124 been accepted by the postal authorities of the government of the United States
125 for special delivery by certified mail to the Department of State. The Clerk's
126 Office is hereby directed to take the aforementioned steps to file this ordinance
127 with the Department of State and to email this ordinance to the Department of
128 State in accordance with Section 125.66(3).

129 PASSED AND DULY ADOPTED this 3rd day of April 2018.

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BOARD OF COUNTY COMMISSIONERS
CHARLOTTE COUNTY, FLORIDA

By: _____
Kenneth W. Doherty, Chairman

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ATTEST:
Roger D. Eaton, Clerk of the Circuit
Court and Ex-officio Clerk to the
Board of County Commissioners

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
Janette S. Knowlton, County Attorney
LR2018-0280