

ADD ON

Meeting Date
April 25, 2017



AGENDA	
Section	New Business
Item No.	VI D 1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	“Burn Ban” Emergency Ordinance – revision to Brevard County Ordinance 2000-23
DEPT/OFFICE:	County Attorney’s Office – Shannon L. Wilson, (321) 633-2090; shannon.wilson@brevardfl.gov Emergency Management Office – Kimberly Prosser, (321) 637-6670; kimberly.prosser@brevardfl.gov Fire Rescue Department – Chief Mark Schollmeyer, (321) 633-2056; mark.schollmeyer@brevardfl.gov

Requested Action:

It is requested the Board of County Commissioners authorize the Chair to execute the attached emergency ordinance implementing the revisions it authorized and the ‘burn ban’ discussed at its meeting on April 11, 2017; further it is requested that the Board authorize staff to review the ordinance to further update definitions, its implementation and return to the Board with recommendations

Summary Explanation & Background:

On April 11, 2017, a representative of Fire Rescue requested that the Board institute a “burn ban” and authorize the ban to be instituted in the future when the Keetch Byram Drought Index (KBDI) County Averages Map, provided by the Florida Forest Service, calculation for Brevard County reaches 500. It was noted that currently Ordinance 2000-23 provides for a “burn ban” to be implemented when the Drought Index meets or exceeds 700. The Board approved the change from 700 to 500.

It is recommended that the Ordinance 2000-23 be amended to reflect the change to 500 given that the ordinance is the mechanism to implement the ban (prohibits open burning – campfires, bonfires, trash burning, open incineration and sale and use of fireworks; authorized public fireworks displays and some fireworks sales are permitted).

The County Attorney’s Office also recommends amending the Ordinance to provide for the correct name of the Drought Index. The ordinance currently describes the Index as the Division of Forestry Drought Index. The Index is actually known as the Keetch Byram Drought Index. It is named after John J. Keetch and George M. Byram who developed the tool to measure/estimate dryness of the various layers of soil. The index number, which ranges from 0 to 800, increases for each day without rain also taking into account the daily high temperature and decreases when it rains. A longer drought, a higher KBDI number – indicates the likelihood of more intense fires as more and dryer ‘fuel’ is available to burn; and more dry organic material increases the difficulty in fire suppression.

Since the original ordinance was passed in 2000, the Division of Forestry is now known as the Florida Forest Service. The Florida Forest Service provides a Keetch Byram Drought Index (KBDI) County Averages Map for the State of Florida. The average calculation for Brevard County is used for the purpose of instituting the prohibition on burning or fireworks as stated above.

The County Attorney’s Office also recommends a further review of the ordinance to update definitions, its implementation and return to the Board with recommendations.

Clerk to the Board Instructions: Upon execution by the Chair of the Board, forward to the Secretary of State for filing; upon receipt of confirmation of filing, forward certified copy to the Municipal Code Corporation for inclusion in the Code of Ordinances of Brevard County

Exhibits Attached: Emergency Ordinance

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR <input type="checkbox"/>
County Manager	Assistant County Manager		Department Director / Extension		Scott Knox, County Attorney/(321) 633-2090		
Stockton Whitten	Assistant County Manager						



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

April 26, 2017

MEMORANDUM

TO: Scott Knox, County Attorney

RE: Item VI.D.1, "Burn Ban" Emergency Ordinance for Revision to Brevard County Ordinance 2000-23

The Board of County Commissioners, in regular session on April 25, 2017, tabled consideration of "Burn Ban" emergency ordinance for Revision to Brevard County Ordinance 2000-27 to the May 9, 2017, Regular meeting; and granted permission to advertise.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/cmw

EMERGENCY ORDINANCE 2017-_____

AN EMERGENCY ORDINANCE AMENDING ORDINANCE 2000-23 PROHIBITING OPEN BURNING, USE, SALE, DISCHARGE OF FIREWORKS IF CERTAIN CONDITIONS ARE PRESENT; AMENDING SECTION 1(a) TO IMPLEMENT PROHIBITED CONDUCT WHEN THE KEETCH BYRAM DROUGHT INDEX COUNTY AVERAGES MAP, AS PUBLISHED BY THE FLORIDA FOREST SERVICE, FOR BREVARD COUNTY MEETS OR EXCEEDS 500; RENUMBERING SECTION 5(1) AND 5(2) TO SECTION 5(a) AND 5(b); AMENDING THE WORDING OF 5(a) TO ALLOW SUSPENDING THE PROHIBITION ON CONDUCT WHEN THE KEETCH BYRAM DROUGHT INDEX COUNTY AVERAGES MAP, AS PUBLISHED BY THE FLORIDA FOREST SERVICE, FOR BREVARD COUNTY FALLS BELOW 450; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Brevard County, its residents and visitors have experienced loss and damage to real and personal property due to dry weather and drought conditions which have resulted in wildfires and continuing danger of wildfires;

WHEREAS, the risk of further forest and brush fires is high when certain dry/drought conditions exist;

WHEREAS, the Emergency Management Director and the County Fire Chief recommend a prohibition against lighting or igniting of any fireworks, except as provided for herein, including unauthorized fireworks displays, and certain sales of fireworks if certain conditions exist;

WHEREAS, the Emergency Management Director and the County Fire Chief further recommend a prohibition against any open burning including campfires, bonfires, trash burning and other open incineration, in certain conditions are met; and

WHEREAS, the current ordinance/code should be amended to provide the proper reference to the "Drought Index" is the "Keetch Byram Drought Index";

WHEREAS, the Florida Forest Service provides an Keetch Byram Drought Index (KBDI) County Averages Map for each county in the State of Florida;

WHEREAS, the code should be amended to reflect the name change of "Division of Forestry" to the "Florida Forest Service (or future state office or agency which provides drought index information)";

WHEREAS, for the purpose of instituting prohibitions on fireworks and burning, the Emergency Management Director and the County Fire Chief recommend the threshold number of the average Keetch Byram Drought Index County Averages Map for the County be reduced from 700 to 500 given the lower number is a more accurate number at which the threat of fire becomes imminent and the current ordinance/code should be amended to reflect this change;

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida as follows:

Section 1. Prohibitions. The sale and use of fireworks (as defined in Section 791.01, Florida Statutes) and ~~the use of~~ open burning (to include campfires, bonfires, trash burning and other similar open incineration) is hereby prohibited when the following conditions are present:

(a) ~~Division of Forestry~~ The Keetch Byram Drought Index County Averages Map, as published by the Florida Forest Service (or future state office or agency which provides drought information), calculation for Brevard County meets or exceeds 700 500; or

(b) The Chair or (where the Chair is unavailable) the Acting Chair, in consultation with the Brevard County Policy Group (if activated) or (where the Policy Group is not activated) the County Manager or designee, orders open burnings and the sale and use of fireworks (as defined in Section 791.01, Florida Statutes) prohibited.

Such prohibitions do not include state-permitted burns, authorized public fireworks displays and fireworks sales which are authorized by state law, including where the wholesale seller directly ships such fireworks outside of Brevard County, without the purchaser participating in any such shipment, except the purchaser may pay for the costs of shipping.

Such prohibition shall remain in effect until suspended as provided Section 5.

Section 2. Enforcement. The Sheriff and other law enforcement officers, fire prevention and emergency personnel, and code enforcement officers shall in conjunction with their duties imposed by state law or local ordinance, enforce the provisions of this ordinance.

Section 3. Violations. Any person, firm or corporation in violation of the terms of this emergency ordinance shall, upon each conviction, be punishable as provided for in Brevard County Code Section 1-7 or Section 125.69(1), Florida Statutes: i.e. be subject to a fine not exceeding \$500.00, or imprisonment in the county jail for a period of up to sixty (60) days, or both such fine and imprisonment. Any law enforcement officer issuing a Notice to Appear or making an arrest pursuant to a violation of this ordinance shall seize any fireworks being used in violation of this ordinance for the purpose of preserving evidence of the violation.

Section 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, it is the intent of the Brevard County Board of County Commissioners that such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalidate provision or application and to this end, the provisions of this ordinance are declared severable.

Section 5. Suspension of Prohibitions. The prohibitions set forth above in Section 1 shall be suspended by the Chair or (where when the Chair is unavailable) Acting Chair upon satisfaction of the following conditions:

(1) (a) The ~~Division of Forestry~~ Keetch Byram Drought Index County Averages Map, as published by the Florida Forest Service , as applied to calculation for Brevard County, falls below 450; or

~~(2)~~ (b) The Brevard County Policy Group (if activated) or (where the Policy Group is not activated), the County Manager or designee in consultation with the Chair or Acting Chair recommends suspension of such prohibitions.

However, should either of the conditions (contained in Section 1 above) which initially triggered such prohibitions once again be present, then such prohibitions would again be in effect, consistent with Section 1 above.

Section 6. Effect Date. This Emergency Ordinance shall take effect upon adoption and filing as provided for by law. A certified copy of the Ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten (10) days of enactment.

Section 7. Area Embraced. This Emergency Ordinance shall be effective countywide.

DONE AND ADOPTED, in regular session this _____ day of April, 2017.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk to the Board

Curt Smith, Chairman

As approved by the Board on:

EMERGENCY ORDINANCE 2017-_____

AN EMERGENCY ORDINANCE AMENDING ORDINANCE 2000-23 PROHIBITING OPEN BURNING, USE, SALE, DISCHARGE OF FIREWORKS IF CERTAIN CONDITIONS ARE PRESENT; AMENDING SECTION 1(a) TO IMPLEMENT PROHIBITED CONDUCT WHEN THE KEETCH BYRAM DROUGHT INDEX COUNTY AVERAGES MAP, AS PUBLISHED BY THE FLORIDA FOREST SERVICE, FOR BREVARD COUNTY MEETS OR EXCEEDS 500; RENUMBERING SECTION 5(1) AND 5(2) TO SECTION 5(a) AND 5(b); AMENDING THE WORDING OF 5(a) TO ALLOW SUSPENDING THE PROHIBITION ON CONDUCT WHEN THE KEETCH BYRAM DROUGHT INDEX COUNTY AVERAGES MAP, AS PUBLISHED BY THE FLORIDA FOREST SERVICE, FOR BREVARD COUNTY FALLS BELOW 450; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Brevard County, its residents and visitors have experienced loss and damage to real and personal property due to dry weather and drought conditions which have resulted in wildfires and continuing danger of wildfires;

WHEREAS, the risk of further forest and brush fires is high when certain dry/drought conditions exist;

WHEREAS, the Emergency Management Director and the County Fire Chief recommend a prohibition against lighting or igniting of any fireworks, except as provided for herein, including unauthorized fireworks displays, and certain sales of fireworks if certain conditions exist;

WHEREAS, the Emergency Management Director and the County Fire Chief further recommend a prohibition against any open burning including campfires, bonfires, trash burning and other open incineration, in certain conditions are met; and

WHEREAS, the current ordinance/code should be amended to provide the proper reference to the "Drought Index" is the "Keetch Byram Drought Index";

WHEREAS, the Florida Forest Service provides an Keetch Byram Drought Index (KBDI) County Averages Map for each county in the State of Florida;

WHEREAS, the code should be amended to reflect the name change of "Division of Forestry" to the "Florida Forest Service (or future state office or agency which provides drought index information)";

WHEREAS, for the purpose of instituting prohibitions on fireworks and burning, the Emergency Management Director and the County Fire Chief recommend the threshold number of the average Keetch Byram Drought Index County Averages Map for the County be reduced from 700 to 500 given the lower number is a more accurate number at which the threat of fire becomes imminent and the current ordinance/code should be amended to reflect this change;

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(a) The Keetch Byram Drought Index County Averages Map, as published by the Florida Forest Service (or future state office or agency which provides drought information), calculation for Brevard County meets or exceeds 500; or

(b) The Chair or (where the Chair is unavailable) the Acting Chair, in consultation with the Brevard County Policy Group (if activated) or (where the Policy Group is not activated) the County Manager or designee, orders open burnings and the sale and use of fireworks (as defined in Section 791.01, Florida Statutes) prohibited.

Such prohibitions do not include state-permitted burns, authorized public fireworks displays and fireworks sales which are authorized by state law, including where the wholesale seller directly ships such fireworks outside of Brevard County, without the purchaser participating in any such shipment, except the purchaser may pay for the costs of shipping.

Such prohibition shall remain in effect until suspended as provided Section 5.

Section 2. Enforcement. The Sheriff and other law enforcement officers, fire prevention and emergency personnel, and code enforcement officers shall in conjunction with their duties imposed by state law or local ordinance, enforce the provisions of this ordinance.

Section 3. Violations. Any person, firm or corporation in violation of the terms of this emergency ordinance shall, upon each conviction, be punishable as provided for in Brevard County Code Section 1-7 or Section 125.69(1), Florida Statutes: i.e. be subject to a fine not exceeding \$500.00, or imprisonment in the county jail for a period of up to sixty (60) days, or both such fine and imprisonment. Any law enforcement officer issuing a Notice to Appear or making an arrest pursuant to a violation of this ordinance shall seize any fireworks being used in violation of this ordinance for the purpose of preserving evidence of the violation.

Section 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, it is the intent of the Brevard County Board of County Commissioners that such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalidated provision or application and to this end, the provisions of this ordinance are declared severable.

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(b) The Brevard County Policy Group (if activated) or (where the Policy Group is not activated), the County Manager or designee in consultation with the Chair or Acting Chair recommends suspension of such prohibitions.

However, should either of the conditions (contained in Section 1 above) which initially triggered such prohibitions once again be present, then such prohibitions would again be in effect, consistent with Section 1 above.

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DONE AND ADOPTED, in regular session this ____ day of April, 2017.

Attest:

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OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk to the Board

Curt Smith, Chairman

As approved by the Board on:

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Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager	Assistant County Manager			Department Director / Extension Scott Knox, County Attorney/(321) 633-2090			
Stockton Whitten	Assistant County Manager			<i>Shannon L. Wilson</i>			

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Such prohibitions do not include state-permitted burns, authorized public fireworks displays and fireworks sales which are authorized by state law, including where the wholesale seller directly ships such fireworks outside of Brevard County, without the purchaser participating in any such shipment, except the purchaser may pay for the costs of shipping.

Such prohibition shall remain in effect until suspended as provided Section 5.

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Section 3. Violations. Any person, firm or corporation in violation of the terms of this emergency ordinance shall, upon each conviction, be punishable as provided for in Brevard County Code Section 1-7 or Section 125.69(1), Florida Statutes: i.e. be subject to a fine not exceeding \$500.00, or imprisonment in the county jail for a period of up to sixty (60) days, or both such fine and imprisonment. Any law enforcement officer issuing a Notice to Appear or making an arrest pursuant to a violation of this ordinance shall seize any fireworks being used in violation of this ordinance for the purpose of preserving evidence of the violation.

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Scott Ellis, Clerk to the Board

Curt Smith, Chairman

As approved by the Board on:
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C.D.I.
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