



## DECISION PAPER

### Temporary Fire Ban Covenants Rule

#### Issue:

There is no rule creating authority for Board of Directors to institute a temporary fire ban.

#### Background:

In the April 2014 Tahoe Donner News, a 45-day member notification was posted notifying members the Board of Directors will be considering adopting a new covenants rule to provide the board of directors with the authority to establish a temporary fire ban, when and if the conditions warrant (such as high fire danger). The Covenants Committee has been discussing the idea for developing the rule for several months to address potential future needs.

Additionally, the board asked the Committee to discuss such a rule and prepare a recommendation of language to be discussed and potentially take action on after appropriate member notification and comment period.

A second Tahoe Donner News article was placed in the May edition of the Tahoe Donner News to further communicate the potential rule, expand on clarification, and elicit member comments. A total of 16 members commented on the potential fire ban rule. All comments are included separately.

At this time, there is no rule for a temporary ban on outdoor fires, thus the Board cannot, with the exception of an emergency scenario, implement such a resolution. The rule as it is written now only includes wood burning fires. Use of BBQs including charcoal is and will be continued to be allowed.

#### Options:

1. Do not adopt new rule.
2. Adopt rule with modification of language to follow the USFS (Forest Service) rules, keeping in mind the Forest Service is very conservative in their decision to ban outdoor fires.
3. Adopt rule with modification in language to follow Cal-Fire (Truckee Fire Protection District follows the lead of Cal-Fire) in any burn bans they might implement. Historically, Cal-Fire has never instituted a 100% burn ban. The seasonal burn ban



is instituted through the summer and fall months but, even with that in effect, people can have “warming, cooking and ceremonial” fires.

4. Adopt rule with other language modification accounting for all agency jurisdiction considerations:

*Sample rule language is as follows:*

***Temporary Burn Ban.*** *The Board of Directors may consider and approve establishment of a temporary burn ban of all outdoor wood fires, including those in a commercially manufactured fire burning device for all private properties, common area, and amenities, during periods of “extreme” fire danger, as designated by local, state or federal authorities.*

This language is similar to other existing Covenants Smoking rule found in Section II General Common Area, Other Association Owned Property and Amenity Rules.

5. Adopt rule as language is proposed.

*Recommended rule language is as follows:*

***Temporary Burn Ban.*** *The Board of Directors may consider and approve establishment of a temporary burn ban of all outdoor wood fires, including those in a commercially manufactured fire burning device for all private properties, common area, and amenities.*

**Recommendations:**

The Covenants Committee requests the Board of Directors consider adopting the new rule to enable Board of Directors determination for temporary ban of all outdoor wood fires (regardless of whether it’s in a commercially manufactured fire burning device).

*Recommended rule language with modifications is as follows:*

***Temporary Burn Ban.*** *The Board of Directors may consider and approve establishment of a temporary burn ban of all outdoor wood fires, including those in a commercially manufactured fire burning device for all private properties, common area, and amenities, during periods of “extreme” fire danger, as designated by local, state or federal authorities.*

Procedurally, burn bans placed into effect by local, state or federal agencies will be considered in the decision making process. Violation of the burn ban is enforceable under the current fine schedule (Fire safety rule violations start at \$1,000 and go up to \$5,000 per incident).





Prepared By: Annie Rosenfeld for Covenants Committee by majority vote

Reviewed By: Al Noyes, Covenants Chairman

General Manager Approval to put on Agenda:

*AN*

Date:

*5/22/2014*





## INFORMATION PAPER

### Understanding Agency Fire Controls and Possible Restrictions and Tahoe Donner Covenants Enforcement on Potential New Rule: Temporary Fire Ban

#### **Issue:**

The Board will be considering adopting a new Covenants rule creating authority to institute a temporary fire ban.

#### **Background:**

As a result of the currently drafted Covenants rule Temporary Fire Ban and questions both by members and board of directors. This information proposed to provide information on agency, federal, state and local, fire control, their potential restrictions, and enforcement. Additionally, the information paper reviews Tahoe Donner enforcement procedures as it would relate to the potential new rule.

#### Agency Fire Restrictions

*United States Forest Service (USFS):* restrictions are generally conservatively enacted throughout the dry season. Stages and activities allowed are as follows as provide by USFS websites:

#### **Stage I**

The first stage occurs when there is an increasing fire danger and/or a increasing preparedness level, and the risks of keeping the forest open to all activities begins to be outweighed by the risks inherent in doing so. Stage I imposes relatively minor restrictions aimed at preventing the start of wildfires based on human activities that are known to be high risk, specifically smoking and campfires.

#### **Prohibited Activities:**

- Building, maintaining, attending, or using a fire or campfire except within a developed recreation site, or improved site.
- Smoking, except within an enclosed vehicle or building, a developed recreation site or while stopped in an area at least three feet in diameter that is barren or cleared of all flammable materials.
- Operating or using any internal or external combustion engine without a spark-arresting device properly installed, maintained, and in effective working order meeting either the





USDA Forest Service Standard, or appropriate Society of Automotive Engineers (SAE) recommended practice.

### **Allowable Activities:**

- Fires within liquid-fueled or gas-fueled stoves, fireplaces within buildings, charcoal grill fires within developed residential or commercial areas, and fires within wood burning stoves.
- Tiki torches, small recreational fires at developed picnic or campground sites contained in permanent fire pits or fire grates with flame lengths not in excess of four feet and which are supervised by a responsible person at least 21 years of age.

### **Stage II**

As the risks increase, the line officer may choose to move to Stage II. This stage intensifies the restrictions from Stage I by focusing on activities that, although normally managed under permit or contract, have a relatively high risk of causing a fire start.

Restrictions under Stage II will affect forest users and will have economic impacts to contractors, permittees, and others. Therefore, the decision to move to Stage II will involve a risk/benefit assessment, as well as consideration of economic and social impacts.

### **Prohibited Activities:**

- Building, maintaining, attending, or using a fire or campfire.
- Smoking, except within an enclosed vehicle or building.
- Possessing, discharging, or using any kind of firework or other pyrotechnic device.
- Using an explosive.
- Operating a chainsaw or other equipment powered by an internal combustion engine between 1:00 p.m. to 1:00 a.m.
- Operating or using any internal or external combustion engine without a spark arresting device properly installed, maintained and in effective working order.
- Welding, or operating an acetylene or other torch with open flame.
- Possess or use a motor vehicle off: Forest System Roads Except when parking in an area devoid of vegetation within 10 feet of the roadway; and except for parking overnight in developed campgrounds and at trailheads.

### **Allowable Activities:**

- Cooking on gas or liquid fueled stoves or grills.





- Persons with a written fire entry and activity permit that specifically authorizes the otherwise prohibited act.
- Persons conducting activities in those designated areas where the activity is specifically authorized by written posted notice.
- Any federal, state, or local officer, or member of an organized rescue or firefighting force in the performance of an official duty.
- Resident owners and private lessees of land within the restricted area exempt from restriction 1 above, provided such fires are within a residence.

### Stage III

Stage III is closure. This stage is selected when there are very high risks and the ability to manage those risks using Stage I or II restrictions is no longer viable. The social, economic, and political impacts of implementing a closure at this point are outweighed by the benefits associated with virtually eliminating the potential for human-caused fire starts.

The area is closed to all entry other than as follows:

- Persons with a written fire entry and activity permit that specifically authorizes the otherwise prohibited act. This may include such persons as grazing-permit holders when entry is needed to gather, move, or otherwise manage their permitted livestock, special-use authorization holders when access is needed to maintain emergency or other communications operations, and others.
- Any federal, state, or local officer, or member of an organized rescue or firefighting force in the performance of an official duty.
- Resident owners and lessees of land within the closed area.

Violations of these fire restrictions is punishable as a Class B misdemeanor, by a fine of not more than \$5000 for an individual or \$10,000 for an organization, or imprisonment for not more than six months or both.

#### *CalFire:*

Throughout the year CalFire monitors the fuels conditions and controls residential debris burning of dead vegetation. Generally, if there is a lack of winter precipitation and/or dry conditions, CalFire will suspend (ban) outdoor burning of landscape debris. The typical time period of this ban spans from sometime in May to October. Enforcement of the ban is supported through local agencies such as fire districts, police departments etc., and through complaints directly to CalFire.





Additionally, CalFire works in concert with California Air Resources Board (CARB) to make decisions on daily burning activities once the burn restrictions are lifted. Daily allowance or prohibition is established with CARB being the primary agency reporting such changes.

*California Air Resources Board-Northern Sierra Air Quality Management District (NSAQMD):*

The NSAQMD maintains and updates numerous burn recorders on a daily basis during those times when open burning is allowed by the California Department of Forestry (CalFire). The primary responsibility for a Burn Day decision resides with 2 agencies: the California Air Resources Board and the California Department of Forestry. The local Air District has the final say on the burn day status, but considers input from all relevant sources and agencies and will almost always defer to the agency that calls for a No Burn Day. The primary factors considered in a decision are: fire danger, air quality and atmospheric dispersion characteristics. CARB has the ability and authority to ban campfires, wood stoves, etc. due to air quality conditions. Enforcement is through CARB or local region of CARB.

*Truckee Fire District:*

Per Bob Bena, Truckee Fire District Fire Chief, the district will follow the lead of Cal Fire when considering any burn bans. Once Cal Fire puts the traditional summertime burn ban into effect, typically set around May 1 annually, the only fires allowed on State or local fire agency responsibility lands are “cooking, ceremonial and warming fires”. This is very subjective however. If someone has a 4’x4’x4’ fire and says it is a ceremonial fire, the responding fire captain can call bluff and require the fire be extinguished.

Occasionally, the Forest Service will institute a “no open fire” ban on all forest service property (campers, hikers, etc. can only use gas cooking stoves). This is only enforced by the Forest Service and Cal Fire doesn’t necessarily follow suit on state and in special district areas.

Chief Bena said that Cal Fire and his agency have never banned the “cooking, ceremonial and warming fires”. He said if they were ever to consider such a ban, this summer might be the first.

Tahoe Donner Enforcement Procedures for Potential New Rule

1. Contact reporting party (RP) to find out what happened. Normally this will be “after the fact” so staff will have to get specifics as to when the incident occurred, where on the property it occurred, etc.; find out if RP has photos to validate the allegation (versus simply taking his or her word for it). Will also need to confirm the RP will attend any subsequent hearings since staff cannot work a complaint of





this type without their involvement (i.e. – anonymous complaints won't work in these circumstances normally).

2. Do site inspection to see if RP's allegation can be corroborated with physical evidence (fire pit with warm coals possibly; contact property owner at home and get spontaneous statement, etc.).
3. Take photos of any physical evidence or if there is none, check neighboring homes for occupancy to see if they can corroborate RP's observations/allegation.
4. Return to NWCH and process formal complaint. This can take close to 30 minutes normally with minimal interruptions.
  - a. Download photos into unit/lot folder.
  - b. Call owner of responsible property and advise them to expect the covenant violation paperwork after it goes through sufficiency review process (since this is a mandatory hearing). During this call, staff will be able to find out if it was the owner that had the fire, renters, friends, etc.
  - c. Complete complaint paperwork, sufficiency review letter, and process/print the photos. Mail paperwork to owner advising them they will be notified of hearing date after sufficiency review is completed.
  - d. Covenants committee chairman (or designee) completes sufficiency review and sign paperwork.
  - e. Contact RP for availability on date of hearing. Then send owner notice of hearing via USPS First Class mail as well as Certified mail/return receipt requested. This will cost approximately \$7.00 per set of letters.
5. A few days before the hearing, contact property owner to see if they are going to be at the hearing. Also verify RP's attendance.
6. On hearing date, prepare for hearing presentation by printing 8.5" x 11" photos for easier viewing by committee.
7. After hearing, send property owner a letter describing the findings of the committee. Also update Goldmine system and paper file.

Prepared By: Annie Rosenfeld

General Manager Approval: 

Date: 







**COVENTANTS NEW RULE TEMPORARY FIRE BAN  
MEMBER COMMENTS:  
April 1, 2014 through May 20, 2014**

*Below are email comments sent to [arosenfeld@tahoedonner.com](mailto:arosenfeld@tahoedonner.com) as welcomed by invitation when posting the 45-day Member Comments for the Covenants New Rule, Temporary Fire Ban during the months of April and through May 20, 2014.*

*Please note, Annie Rosenfeld responded to all specific questions relating to the potential rule and any other questions in addition to providing the following response:*

*Thank you for submitting comments on the potential burn ban. Your comments will be provided to the Board of Directors prior to the May 31 board meeting for their review and consideration during the agenda item.*

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I just want to express my support for the fire ban in Tahoe Donner. There is already to many people using wood burning stoves which pollute the wire in Tahoe Donner. Also, I have people on my street who burn wood piles instead on using the green bag program. The burning of the wood is noxious smelling to the point that I cannot leave my window open.

I support the ban on outdoor wood burning even with a permit from Nevada County and the Truckee Fire Protection District.

Is there any discussion from the board to ban wood burning stoves?

Thank you for receiving my comments.

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I was just reading through my Tahoe Donner News and saw the article about the fire ban. We are so glad this is being considered for our area. Our neighbors, across from our home at 13627 Cristallina Way, have a fire pit, which they love to use (especially in the summer, which seems INSANE to us.) There are many nights when we cannot sleep because the smoke is wafting toward our house and we are so nervous that the entire area will catch on fire. Perhaps during snowy winter weather, this would be o.k., but definitely not during this draught and never in the summer.

Thanks so much,





I just read of the proposed Temporary Fire Ban in the TD News. As a nearly 15 year property owner in Tahoe Donner, our family feels compelled to speak up on this one. We completely understand and agree with the need to restrict outdoor fires. However, banning fires that are properly contained within commercially manufactured fire burning devices is going too far.

Families throughout this community have been responsibly enjoying these types of "camp fires" without ill effects since the beginning. Eliminating this form of recreation would be an irresponsible overstep by the association. While this form of action is to be expected by a suburban HOA, it is not appropriate for a mountain community.

We respectfully request that the board reconsider its action in regards to adopting this rule as it has been presented.

Thank you for your consideration.

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Nothing scares me more than my neighbor's wood fire on his deck. Every night summer and winter he builds a fire in a pit on his back deck. The flames sometimes are leaping 10-15 feet in the air. Our homes are so close that if his home or nearby trees go up I know my home will be going up, too. You'd think I could just go next door and talk to him about this, but he has a pitbull that he lets roam free. I called the Truckee Fire Dept. about this last summer to ask if the fire was illegal, but they said it was O.K. if someone was watching it. Well, that made me feel really safe knowing that a drunk was watching this roaring fire.

All of this is why I wholeheartedly endorse a ban on outdoor wood fires. I hope the board will approve the burn ban. Thank you for your efforts on this smart proposal.

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If CalFire, USFS, or Truckee Fire find it necessary to impose restrictions, that is fine (as they have in years past). But until a local fire jurisdictions mandates it, I don't think TD Board should take it upon themselves to sanction TD Homeowners from using "commercially manufactured fire burning device."

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I am very curious where the heck the idea of banning wood fires, particularly "including those in a commercially manufactured fire burring device" came from? This is obviously not a well thought out idea.

This implies no BBQs, you know? Charcoal is a wood byproduct.





I understand the desire to prevent fires but this feels a bit heavy handed and totalitarian.

The wording in the April TDNews is incredibly vague. The Board of Directors should not have the ability to pass something so broad.

Where and when on May 31 is this meeting? This is something that needs a lot more discussion and details rather than a quick broad stroke.

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I have been in the Fire Service for 34 years, as a Captain/Paramedic, Special Operations Task Force Leader responsible for US&R, Hazmat, CBRN/WMD response, FEMA Task Force 3 Manager and have been deployed on thousands of emergency responses with local, state and federal agencies. I have vast knowledge, education, certifications and experience in response, mitigation and code enforcement. I have extensive training and first hand experience in wildland, urban interface and structural fire fighting. I am a full time resident in Tahoe Donner with my wife and daughter.

I don't take the drought situation lightly, nor being responsible for keeping my property and our community fire safe. I would differ with your opinion that this proposal isn't in conflict with our local fire agencies, as they do allow the use of outside commercially manufactured devices that adhere to local fire code. The local fire jurisdiction also monitors weather, fuel moisture, fuel types, topography, slope aspect and uses this scientific information to judge the fire danger on a daily basis. If the drought conditions impact the above mentioned, they will ban the use of unsafe outdoor fires. I put my faith in our local fire jurisdictions professionalism and experience to advise our community when the fire danger is at a state where small fires can become large conflagrations. We as homeowners vote board members to their respective positions in hopes they will base their judgement on expert opinions and follow our local jurisdictions practices when it comes to codes, laws and basic home owners rights. As a seasoned fire service veteran and home owner I would hope the Board of Directors doesn't try and supersede our local fire jurisdictions authority on this matter, but rather uses there judgement as a prudent guideline.

I would encourage the Board of Directors to work with our local fire jurisdictions to staff a Type 3 Fire Apparatus (Wildland), housing it at the Fire Station 94 located in TD during Fire Season. Also, look at utilizing the "TD Trail Crew" to perform initial fire attack on wildland fires within TD boundaries, after they are trained and equipped to do so.

Please feel free to forward my comments to the TD Board of Directors, their replies are welcome.

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Can you please send email a copy of the proposed "Temporary Fire Ban" with the exact language that will be considered by the TD Board of Directors. The article in this months Tahoe Donner News was very vague and non-informative. Depending upon the language, scope and potentially over stepping the authority of the Town of Truckee Fire Protection Districts approved/adopted Fire Code, this may be a serious infringement on TD Homeowners rights to use approved outdoor wood fired devices.

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My husband and I own a home in Tahoe Donner and read in the recent issue of Tahoe Donner News about the proposed new rule for temporary fire ban. We would like let you know that we would fully support the board of directors approving such a temporary ban of all outdoor wood fires.

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I think it is a very good idea to put a temporary ban on all outdoor wood fires this coming summer. The reasons are all obvious, but the ban must be conveyed to all Tahoe Donner residents, including seasonal renters and visitors. I think notices should be posted at all common areas and maybe (temporary) sign posted on all streets. We have seen what unattended fires can do, this ban is a "must do" in our community.

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We have been full timers here for 24 years, and have seen many close calls.

When I was Chairman of the Covenants Committee we had a number of fire safety related meetings with Bill Houdyschell, The Forest Service, Calfire, and the Truckee Fire District . During the last meeting I asked them that if fire reached the crown of the trees in TD, could it be stopped. Their unanimous answer was "No". It only takes one that "gets away". We could easily be another "Angora".

We totally support the proposal.

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#### *New Comments Received April 17-May 20, 2014*

Good evening,

I reside in unit 11 and even though we are not on the inspection list for this season I have already done all my "defensible space" work as I am terrified about the potential for wildfire in this drought season.





Over the last couple of seasons, I have "had words" with renters in my neighborhood. They sit around their cordwood fired fire pits with flames augmented by lighter fluid going 8 feet in the air and embers a lot farther than that. When asked if they have any idea as to the potential disaster that they are creating I have been politely (and at times not so politely) told to "mind my own business." The attitude is that they have paid the rent for their weekend in the woods and they can damn well do whatever they want.

My only recourse has been to call TD Security. Should we stick w that venue or should Truckee Fire or Police be involved. The renters are not stakeholders and pretty much feel like they have carte blanche in these regards. What responsibility does the property owner of the rental property bear?

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My name is XXX. I have a house at XXXXX Baden Rd. It is a vacation house. In the event the Board announces a temporary ban on outdoor fires, including portable fire pits, how will we be notified so we'll know that's the case when we arrive?

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I am in favor of a temporary burn ban as indicated in the Tahoe Donner News when fire danger is high.

That ban would limit the use of fire on TD property other than charcoal, electric or gas grills used for cooking in customary grill devices. However I believe the Town of Truckee Fire Department might have that authority now as they can ban 'open burning'. If that is not the case I would prefer having Tahoe Donner encourage the Town of Truckee to pass an ordinance giving that authority to the Truckee Fire Department to decide when there is a ban on burning in Tahoe Donner. Of course TD would be able to 'encourage' the Fire Department to initiate the ban when we thought it was necessary.

If it was up to me I would ban all burning unless it was raining, snowing or the ground was snow covered. And ban any campfire kind of device on decks.

I have seen neighbors, having camp fires on their decks (in devices with screens to prevent sparks) with flames leaping a couple of feet high. Most of our decks are either wood or composite plastic/wood both of which are highly flammable.

I would like to see some kind of strict guideline for owners who rent their property to make sure their renters know the TD rules, particularly the use of charcoal and gas grills for outdoor





cooking. We know that fires have been started in the past by renters tossing coals over the side of decks causing fires that have the potential of destroying TD and beyond our boundaries.

We have been fortunate that fires in TD were able to be put out without the conflagration that we saw in the Oakland/Berkeley hills some years back. We all have witnessed fires in other parts of the state that have been devastating, burning houses, killing wildlife and destroying our forests.

I encourage the board to put a No Smoking policy in place for all of our trails and amenities all of the time. I don't think we need a covenant for a non smoking rule.

Fire danger will be unusually high this year because of our record drought. Let's keep members healthy and keep our fingers crossed that we avoid fire.

While we are on the subject perhaps the Forest Service or whoever has authority over the shooting range that has been questioned, should be contacted and encouraged to ban shooting during the dry months. Shooting has been know to start fires.

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Please proceed with a ban on these fires.

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I am inquiring about the proposed wood burn ban. Would this be a permanent ban? I agree that, like the forest service bans, this might be appropriate during dry times. However, there are other times when the fire hazard is minimal and many residents enjoy a fire in an enclosed fire pit. I would suggest that the community post signs, similar to the forest service, when fires are to be banned--rather than to make wood fires banned permanently.

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I am trying to understand the substance of what is being considered, as reported in the April News.

If this is to provide the board of directors with the authority to establish a temporary fire ban, when and if the conditions warrant (such as high fire danger), then I am supportive of the Rule. It would be helpful if you described the conditions that might lead to a fire ban.

If however, this Rule actually imposes a fire ban, without explanation and time frames, then the explanation is incomplete and I question the basis for imposing the fire ban.

