

ORDINANCE NO. 9 – 23

AN ORDINANCE TO AMEND AND RE-ORDAIN CHAPTER 9, FIRE PREVENTION AND PROTECTION OF THE CODE OF THE COUNTY OF SPOTSYLVANIA, VIRGINIA.

BE IT ORDAINED By the Board of the County of Spotsylvania, Virginia, that Chapter 9, Fire Prevention and Protection, is hereby amended and re-ordained by amending Article IV, Open Air Burning, as follows:

ARTICLE IV. - OPEN AIR BURNING

Sec. 9-100. - Purpose.

The purpose of this article is to protect the public health, safety and welfare by regulating open fires within the county to achieve and maintain, to the greatest degree practicable, levels of air quality that will provide comfort and convenience to the people of the county while promoting economic and social development. The regulations provided herein are intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.

(Ord. No. 9-2, 1-12-93)

Sec. 9-101. - Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Debris waste* means waste resulting from land clearing operations. Debris waste includes but is not limited to stumps, wood, brush, leaves, soil and road spoils. For the purpose of this article, debris waste shall not mean leaves and tree, yard and garden trimmings located on and generated from the premises of a private residence.

*Fire marshal* means the Spotsylvania County Fire Marshal or his designee.

*Open burning* means the combustion of solid waste without: (1) control of combustion air to maintain adequate temperature for efficient combustion; (2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and (3) control of combustion products' emission. Open burning is the burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without first passing through a stack, duct or chimney. Open pit incineration is a form of open burning.

*Open pit incineration* means using an open pit incinerator, a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain destructors and over draft incinerators.

*Recreational fire* means an outdoor fire, burning materials other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, portable outdoor fireplace, barbeque grill, or barbeque pit and has a total fuel area of 3 feet or less in diameter and 2 feet or less in height for pleasure, religious, ceremonial, cooking, warmth, or similar purposes.

*Yard waste* means leaves, twigs, small branches (no larger than 2 inches in diameter) and tree, yard, and garden trimmings located on and generated from the premises of a private residence.

(Ord. No. 9-2, 1-12-93)

Sec. 9-102. - Open burning regulations.

(a) The Commonwealth of Virginia State Air Pollution Control Board Regulations for Open Burning, 9 VAC 5 Chapter 130 in current form and as amended in the future, are hereby adopted and incorporated by reference; provided, however, any county regulation specified in this article more restrictive than such state regulations shall apply and take precedence over the state regulations. Any permits required by such state regulations may be issued by the county, if authorized by the state agency otherwise responsible.

(b) The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

- (1) Open burning for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house firefighting personnel;
- (2) Open burning for bonfires, camp fires, or other recreational fires;
- (3) Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;
- (4) Open burning for forest management and agriculture practices approved by the state air pollution control board;
- (5) Open burning for the destruction of classified military documents.

(c) No landowner, tenant, occupant or other person shall cause or permit the open burning of debris waste upon any property which is zoned Mixed Use, Plan Development Housing, Residential Housing Manufactured Home Park, Residential 1, Residential 2, Residential 3, Residential 8, Residential 12, Rural, Office 1, Office 2 or Village Residential, as designated on the county zoning map, unless such burning is at least one thousand (1,000) feet from any occupied dwelling or building and is done by open pit incineration conducted under a valid county open air incineration permit.

(d) No landowner, tenant, occupant or other person shall cause or permit the open burning of debris waste upon any property which is zoned Commercial 1, Commercial 2, Commercial 3, Industrial 1, Industrial 2, Planned Development Commercial or Village Commercial as designated on the county zoning map, unless such burning is at least seven hundred fifty (750) feet from any occupied dwelling or building and is done by open pit incineration conducted under a valid county open air incineration permit.

(e) No landowner, tenant, occupant or other person shall cause or permit the open burning of debris waste upon any property which is zoned Agricultural 2, Agricultural 3, Resort Agricultural, Residential Resort or Resort Commercial, as designated on the county zoning map, unless such burning is at least five hundred (500) feet from any occupied dwelling or structure;

(f) On property which is zoned Agricultural 3, open burning is permitted for the disposal of yard waste located on the premises of private property, provided such burning is at least 50 feet from any structure, and the fires measure no larger than 4 feet by 4 feet by 4 feet.

(g) On property which is not zoned Agricultural 3, open burning is permitted for the disposal of yard waste, provided that the following conditions are met:

(1) The burning takes place on the premises of the private property;

(2) The fires measure no larger than 4 feet by 4 feet by 4 feet;

(3) The location of the burning is not less than three hundred (300) feet from any occupied structure;

(4) The burning shall be attended at all times; sufficient tools, such as a garden hose, water supply, or other necessary items or machinery, must be readily available on-site to control the fire.

(5) No regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road;

(6) If a person residing within one thousand (1,000) feet of the burning objects to a fire that, according to a determination of the fire marshal, causes nuisance smoke affecting public health, safety and welfare, the fire marshal may order the burning to be extinguished.

(h) The separate distances specified in (c) through (e) and (g) above, shall be reduced by the fire marshal with the prior written permission of the owner and occupant of the occupied dwelling or structure to the minimum agreed upon distance which does not threaten the safety of life or property.

(i) The requirement that burning be done by open pit incineration under an open air incineration permit specified in (c) and (d) above, shall not apply to the open burning of debris waste originating from and being burned on lots of fifteen thousand (15,000) square feet or less in size provided that the burning is conducted under a valid small lot open air burning permit. All state regulations referenced in (a) above and the separation distance specified in (c) and (d) above, shall apply to any open burning under a small lot open air burning permit. Nothing herein shall be construed so as to circumvent the intent of this article by allowing multiple small lot fires, under multiple permits, at the same time in the same area.

(j) Debris waste and yard waste may only be burned on the property/parcel from which it originated.

(k) Open burning for land clearing is not permitted from May 1<sup>st</sup> to Oct 1<sup>st</sup>.

(l) Requirements for any specific zoning classification not listed above, shall be determined by the Fire Marshal.

*(Ord. No. 9-2, 1-12-93; Ord. No. 9-3, 5-11-93; Ord. No. 9-4, 7-12-94; Ord. No. 9-5, 7-25-95; Ord. No. 9-6, 10-8-96; Ord. No. 9-7, 8-11-98; Ord. No. 9-16, 11-14-06)*

Sec. 9-103. - County permit.

(a) Permits mandated by this article shall be obtained from the fire marshal by making a proper application and paying a permit fee. Permit fees shall be set by resolution of the board of supervisors.

(b) Applications for permits shall be submitted in writing at least ten (10) days before any proposed open burning and shall be in such form and contain such information as required by the fire marshal. Permit applications shall include, at a minimum:

(1) The name, address and phone number of the property owner, tenant, occupant and other persons involved in the operation of the open burning;

- (2) The location of the site;
  - (3) The description of the incinerator by manufacture, model number or other identifying characteristics, if applicable;
  - (4) Anticipated dates and times of operation;
  - (5) An accurate sketch plan showing the location of the burn site, measurement to the nearest off-site residence, location of nearest water source and other site details as required by the fire marshal;
  - (6) The name, address and phone number of person(s) who shall remain on-site during the burning; and
  - (7) Any additional specifications and information deemed necessary by the fire marshal.
- (c) A separate permit shall be required for each burn location.
- (d) Permits shall be non-transferable and shall expire ninety (90) days from the date of issuance or such shorter time, if specified by the fire marshal.
- (e) Any permit required by this article shall be prominently displayed at the burning site and the site shall remain open for county inspection at all reasonable times during burning.

*(Ord. No. 9-2, 1-12-93)*

Sec. 9-104. - Open air burning permit conditions.

- (a) All open air burning permits issued under this article shall include, at a minimum, the following conditions:
- (1) All reasonable efforts shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood;
  - (2) The material to be burned shall consist of brush, stumps and similar land clearing refuse generated at the site and shall not include demolition material or any refuse brought in from other sites;
  - (3) The burning shall be at least two thousand (2,000) feet from any hospital, nursing home or school and shall otherwise comply with the separation distances required by section 9-102. Burning shall be conducted at the greatest distance practicable from

highways and air fields. If the fire marshal determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased;

- (4) The burning shall be attended at all times; sufficient tools, such as a garden hose, water supply, or other necessary items or machinery, must be readily available on-site to control the fire;
- (5) The burning shall be conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances shall the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials;
- (7) The burning shall be conducted only when the prevailing winds are away from any residential or commercial area; and
- (8) No burning shall be conducted on weekends or on any recognized federal, state or local holidays.

(b) If the fire marshal determines an open burning situation is a threat to the public health, safety and welfare, he may order that permit conditions be modified, amended or added, including, but not limited to, requiring separation distances be increased, that special incineration devices be modified to reduce excessive smoke and ash fallout, and if necessary, ordering that the open burning operation be terminated and extinguished.

*(Ord. No. 9-2, 1-12-93)*

#### Sec. 9-105. - Enforcement and penalties.

(a) The fire marshal shall enforce this article.

(b) If the fire marshal determines a permit holder is in violation of the conditions of a permit, he may revoke the permit and cause the open burning to be terminated and extinguished until such time as he is satisfied and assured that the permit conditions will be met. If the fire marshal determines that an open burning situation is an immediate threat to the public health, safety and welfare, he may order that such open burning operation be limited, terminated or extinguished until such time as the danger to the public health, safety and welfare is no longer present.

(c) Any landowner, tenant, occupant or other person violating the provisions of this article, or the order of the fire marshal provided for herein, shall, upon conviction, be guilty of a class 1 misdemeanor and shall be subject to a fine of not more than two thousand-five hundred dollars (\$2,500.00) for each violation. Each day of continued violation shall constitute a separate

offense.

(d) Nothing contained herein shall preclude the county from seeking such other relief at law or equity for violations of the provisions of this article, as may be deemed expedient and necessary, whether or not criminal charges have been or may be made.

(e) This article shall not be construed to abridge, limit, impair, create, enlarge or otherwise effect substantively or procedurally the rights of any person to seek damages or other relief on account of injury to persons or property.

*(Ord. No. 9-2, 1-12-93)*