

**STATE OF GEORGIA
COUNTY OF CHEROKEE**

ORDINANCE NO. 2021-O-013

AN ORDINANCE OF THE CHEROKEE COUNTY BOARD OF COMMISSIONERS TO REPEAL ARTICLE IV OF CHAPTER 26 OF THE CODE OF ORDINANCES OF CHEROKEE COUNTY, GEORGIA ENTITLED “OPEN BURNING”; TO ENACT A NEW PROVISION TO REPLACE SAID REPEALED ARTICLE UNDER CHAPTER 28 AS ARTICLE V ENTITLED “OPEN BURNING” TO PROVIDE UPDATE GUIDANCE AND REGULATIONS REGARDING BURNING BY RESIDENTS OF CHEROKEE COUNTY, GEORGIA; TO PROVIDE GUIDELINES FOR ENFORCEMENT AND PENALTIES FOR SUCH ORDINANCE; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the State in November of 1982, and effective as of July 1, 1983, provides in Article IX, Section II, Paragraph I thereof, that the governing authority of a county may adopt clearly reasonable ordinances, resolutions, and regulations; and

WHEREAS, the Board of Commissioners desires to repeal Article IV of Chapter 26 of the Cherokee County Code of Ordinances related to “Open Burning” and replace such Section with an update ordinance that reflects changes in state guidance and state law; and

WHEREAS, this Ordinance change will benefit the safety and welfare of the citizens of Cherokee County; and

WHEREAS, the governing authority of Cherokee County, to wit, the Board of Commissioners, desires to exercise its authority in adopting this Ordinance; and

NOW, THEREFORE, BE IT ORDAINED by the Cherokee County Board of Commissioners, and it is hereby so ordained by authority of the same that:

Section 1

Article IV of Chapter 26 of the Code of Ordinances of Cherokee County, Georgia shall be repealed and replaced by a new ordinance. Said ordinance shall be enacted under Chapter 28 as Article V and numbered as necessary in order to provide continuity of said Chapter. Said Ordinance shall read as shown in the attached Exhibit A.

Section 2.

It is hereby ordained that the provisions of this Ordinance shall become a part of the Code of Ordinances of Cherokee County, Georgia, and the sections of this ordinance may be renumbered to accomplish such intention.

Section 3.

(a) It is hereby declared to be the intention of the Cherokee County Board of Commissioners that all sections, paragraphs, sentences, clauses, and phrases of this Ordinance are and were, upon their enactment, believed by the Cherokee County Board of Commissioners to be fully valid, enforceable, and constitutional.

(b) It is hereby declared to be the intention of the Cherokee County Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Chapter is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Cherokee County Board of Commissioners that, to the greatest extent allowed by law, no section, paragraph, sentence, clause, or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Cherokee County Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs, and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section 4.

All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such

conflict, hereby repealed or set aside.

Section 5.

This Ordinance shall become effective immediately upon its adoption.

SO ORDAINED, APPROVED, AND ADOPTED this 7th day of September, 2021.

By: _____
HARRY B. JOHNSTON, Chairman

Attest: _____
CHRISTY BLACK, County Clerk

(SEAL)

ARTICLE V. - OUTDOOR BURNING

This article is intended to promote and safeguard the public health, safety, comfort, air quality, and living conditions of the citizens of unincorporated Cherokee County relative to outdoor burning.

Sec. 28-105. - Applicability.

- (a) This article applies to all outdoor burning within unincorporated Cherokee County.
- (b) The requirements of this article are supplemental to state laws and regulations governing outdoor burning restrictions and restrictions governing the disposal of construction waste. To the extent any state law, environmental protection division rules, or other adopted codes is more stringent than the requirements contained in this article, such other law, rule, and/or code shall be controlling.
- (c) The Environmental Protection Division's (EPD) Summer Burn Ban is in effect for Cherokee County, GA from May 1- Sept 30 each year.

Sec. 28-106 - Definitions.

- (a) *Approved* means acceptable to the fire chief or fire marshal.
- (b) *Agricultural burn* means burning necessary for the removal of crop residues for the production or harvesting of crops. A permit is required from the Georgia Forestry Commission.
- (c) *Bonfire* means an outdoor fire larger than a recreational fire in which only logs or clean wood are being burned for ceremonial purposes. A permit is required from the Cherokee County Fire Marshal's Office.
- (d) *Clean wood* means natural wood which has not been painted, varnished, or coated with a similar material; has not been pressure treated with preservatives; and does not contain resins or glues as in plywood or other composite wood products.
- (e) *Land clearing burn* means the burning of debris generated by machine of an area for the purpose of land clearing. This type of burning requires the use of an Air Curtain Destructor (ACD). A permit from the Cherokee County Fire Marshal's Office and the Georgia Forestry Commission is required. Permit fees will apply as per Chapter 28, Article II, Sec 28-30 Fees of Cherokee County Code of Ordinances.
- (f) *Fire Chief* means the Fire Chief of Cherokee County Fire & Emergency Services or his or her designee.
- (g) *Fire Marshal* means the Fire Official of Cherokee County Fire & Emergency Services who is responsible for enforcing fire regulations, fire codes and county ordinances or his or her designee.
- (h) *Garbage* means any material that includes but is not limited to plastic products, Styrofoam, fiberglass, recycling wire (burned to access metal), tires, painted/varnished wood, clothing, furniture, mattresses, boxes, papers, household food waste, any poisonous vines/plants and kudzu vines.
- (i) *High Wind* means wind speeds of greater than 10 mph.
- (j) *Incinerator or combustion unit* means a commercially constructed container designed for burning yard waste which has a minimum of 36 percent of its surface area open. Any incinerator or combustion unit must be operated in accordance with the manufacturer's specifications. Incinerators or combustion units which are homemade, modified from original design, or noncommercially available are prohibited.

- (k) *Log* means a piece of wood cut from trees that are dried and clean of soil so as not to produce large amounts of smoke when burning.
- (l) *Low Humidity* means humidity levels of less than 35%.
- (m) *Out of control fire* means a fire that is no longer manageable or limited and requires a fire department response to control and extinguish the fire.
- (n) *Outdoor burning (Open-Burning)* means kindling or maintaining a fire where the products of combustion are emitted directly into the ambient air without passing through a stack or a chimney.
- (o) *Property* means any land, structure, building, fence, vehicle, landscaping, or other materials, etc.
- (p) *Prescribed burn or slash burn* means burning of any forest land by the owners or the owner's designee. A permit is required from the Georgia Forestry Commission.
- (q) *Recreational fire* means an outdoor fire in which only *logs* or *clean wood* are being burned where the fuel is contained in an incinerator, outdoor fireplace, barbeque grill or barbeque pit and has a total fuel area of three feet or less in diameter and two feet or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes, and which is not used to dispose of garbage or yard waste. No permit required.
- (r) *Yard waste* means limited natural vegetation yard debris. Natural vegetation includes leaves, pine straw, and dry brush/limbs no more than six (6) inches in diameter that have fallen or been cut from growth on one's own property. No permit required.

Sec. 28-107. - Exceptions to outdoor burning restrictions.

Restrictions on outdoor burning do not apply to the following:

- (a) Grilling or cooking using charcoal, wood, propane or natural gas.
- (b) Burning in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation. Garbage is not allowed to be burned.
- (c) For single-family residential attached or detached dwellings, burning clean wood in a chimenea, fire bowl, or other similar device or outdoor fireplace. Garbage is not allowed to be burned.
- (d) The use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction, or maintenance activities (asphalt kettles, road flares, smudge pots, etc.).
- (e) Incinerators installed in accordance with all state and local codes.
- (f) Fire department practice burns that comply with all state and local codes.
- (g) The retirement of flags by burning in accordance with recognized practices.

Sec. 28-108. - Burning prohibitions.

The prohibitions are intended to promote and safeguard the public health, safety, comfort, air quality, and living conditions of the citizens of unincorporated Cherokee County.

- (a) Burning of petroleum-based products, such as tires, plastics, and roof shingles, which produce black smoke, is prohibited.
- (b) Burning of garbage of any kind is prohibited.
- (c) Burning of any material in a barrel is prohibited. An incinerator or combustion unit is not a barrel.
- (d) When approved by the authority having jurisdiction, burning in a barrel with spark arrestor on top is allowed as a warming fire on construction sites. No treated lumber or garbage is allowed to be burned.
- (e) No burning is allowed on high wind days (ten miles per hour sustained or higher), low humidity of less than 35%, or on days when the atmospheric conditions (cloudy, overcast, or raining) would cause the smoke to remain low to the ground.
- (f) Burning of yard waste on property other than that which it fell or from which it was cut from, is prohibited.
- (g) Burning is prohibited on the surface of county or private roads and streets.
- (h) The fire marshal shall be authorized to ban any or all forms of outdoor burning when atmospheric or local conditions make outdoor fires hazardous.
- (i) The fire marshal shall be authorized to require the extinguishment of any fire if it adversely interferes with the enjoyment of life or use of property.

Sec. 28-109. - Exceptions to burning prohibitions.

The fire chief may allow open burning when special circumstances warrant exceptions to prohibitions against burning. Special circumstances would include:

- (a) Disposal of vegetative debris from storm damage with the approval of state official(s).
- (b) Any other special circumstances as determined by the fire chief.

Sec. 28-110. - Safeguards and limitations for outdoor burning. No permit required.

No permits are required for the following types of fires. Safety precautions shall be followed.

- (a) *Recreational fires*. No permit required. Recreational fires shall not be located within 25 feet of a structure or other combustible material. Conditions which could cause a fire to spread within 25 feet of a structure shall be eliminated prior to ignition.
- (b) *Yard waste*. No permit required. When burning *yard waste*, the fire pile shall not be larger than 6 feet in diameter, no more than 2 feet in height and shall not be located within 50 feet of a structure or other combustible material and shall not be located within 25 feet of a wooded area or property line and/or within 25 feet of a public roadway with a posted speed limit greater than 35 mph. Conditions which could cause a fire to spread within 50 feet of a structure shall be eliminated prior to ignition. Multiple fires on the same property must be at least 50 feet apart and each fire must comply with all provisions of this article. Burning is allowed between 10:00 a.m. and one hour before sunset, October 1 through April 30.

- *Fires must be attended.* Any type of outdoor burning referenced in this article must be constantly attended by an adult who must be outdoors within 100 feet of the fire and watching the fire at all times. A water-charged hose that can reach the fire, a rake, shovel or similar hand tool must be on hand and ready for use if needed to limit or extinguish the fire. The nozzle of such water hose or fire extinguisher must be kept within 25 feet of the fire.
- *Extinguishing of fire.* Failure to comply with these rules which results in an uncontrolled fire or a valid complaint by nearby property owner(s) or resident that requires the response of the fire department will result in the fire being extinguished immediately. When extinguishing an outdoor fire, no smoldering or hot coals shall remain.

Sec. 28-111. – Safeguards and limitations for outdoor burning. Permit Required.

No person shall start or maintain any outdoor burning listed in this section without first obtaining a permit issued by Cherokee County Fire Marshal's Office. Permits may be revoked or withheld by the fire marshal for just cause.

- (a) *Bonfire.* Burn permit required. A bonfire shall not be located within a minimum of 50 feet of a structure or other combustible material, and shall be a minimum of 100 feet from property lines. The bonfire may not include any brush, leaves, straw or treated lumber. There shall be a 50-foot clear area around the fire area, clear of combustible materials, debris or material that could cause fire to spread. Distances may be increased by the fire marshal depending on the size of the bonfire. Bonfires shall be a maximum of 12 feet in each length, width, and height. The permit will be valid for specified dates and times.
- (b) *Open burning for purposes of land clearing.* Burn permit(s) required. The following conditions shall govern open burning for the purposes of land clearing. The company, contractor, and/or landowner in control of the property is responsible for compliance with the requirements of this article and the rules established by GA EPD. Permits may be revoked at any time by the issuing agency or its representing agency if conditions or permit restrictions require such.
 - (1) Open burning for the purpose of land clearing is permitted from October 1 through April 30.
 - (2) An air curtain destructor (ACD), which is constructed, installed, and operating in a manner consistent with good air pollution control practices for minimizing emissions of fly ash and smoke, is required for open burning in a pit for the purposes of land clearing.
 - (3) After the pit/site is prepared, the owner shall schedule an inspection with the Fire Marshal's Office (FMO) and obtain an ACD permit prior to any burning. The permit will be valid for specified dates, with a maximum of 30 days.
 - (4) The location of the ACD pit shall be at least 300 feet from any occupied structure or public road. An ACD used solely for utility clearing or road clearing may be located at a lesser distance upon approval of the fire marshal.
 - (5) No more than one air curtain destructor shall be operated within a ten-acre area at one time, unless there is a minimum of 1,000 feet between any two air curtain destructors.

- (6) A pit shall be excavated to the following dimensions: 8 feet wide × 12—15 feet deep × 15—30 feet long (the length is dependent upon the length of the ACD manifold). In no case shall the eight-foot width be exceeded. The pit must be excavated so as to have at least three vertical sides in soil capable of maintaining vertical walls 15 feet in depth without failure. Walls shall not be undercut during excavation. If a front-end loader is used for the excavation, the end of the pit used for ingress and egress, as well as the ramp, shall be filled with dirt prior to the start of the burn. Any accumulation of water in the pit shall be removed prior to loading the pit.
- (7) The manifold shall be placed and properly supported on a berm of soil (one to one and one-half feet high), and the space between the manifold and ground shall be sealed. The manifold shall be positioned to direct the air curtain at an imaginary line 24 and 36 inches below the top of the opposite wall.
- (8) A "stop guide" or restraint shall be provided at the loading site of the pit to keep the loader from getting too close to the pit during operation. If spalling or "cave off" of the pit walls occurs during operation, a new pit shall be constructed and the existing pit filled with soil.
- (9) Burning shall occur in the pit, with the pit initially being loaded half full. Only wood waste consisting of trees, logs, large brush and stumps which are relatively free of soil shall be burned. Leaves, sawdust, other densely packed wood wastes, paper, and chemically treated, coated, or impregnated wood shall not be burned.
- (10) In igniting the wood, up to one-half gallon of fuel oil may be utilized. Tires or other rubber products, plastic, heavy oils, highly volatile solvents such as mineral spirits or gasoline, and asphaltic-based or impregnated materials shall not be used for ignition or to maintain the operation of the air curtain destructor.
- (11) The fire must be at full intensity prior to intermittent charging. With respect to intermittent charging, the pit shall not be overloaded, so as to not protrude above the air curtain.
- (12) Ash shall be removed to maintain efficient and proper combustion, and shall not be allowed to build up in the pit to higher than one-third of the pit's depth or to the point that ash impedes combustion and is blown out of the pit, whichever occurs first.
- (13) The cleaning out of the air curtain destructor pit shall be performed in a manner to prevent fugitive ash and or dust.
- (14) The air curtain destructor shall not be fired before 10:00 a.m. and the fire must be completely extinguished, using water, covering with dirt or using another acceptable method, at least one hour before sunset. All fires are to be completely extinguished by the specified time unless special conditions exist and prior authorization has been granted. It is the responsibility of the party requesting the permit to notify the issuing agency of the special conditions when the permit is being issued.
- (15) No open burning for the purposes of land clearing is allowed at night, on weekends, or on holidays.
- (16) No open burning will be authorized when weather conditions (wind, humidity, temperature, mixing level, overcast, etc.) may jeopardize the safety of life and property as determined by the Fire Marshal's Office based on the daily weather forecast obtained from the state forestry commission or other weather forecasting resource.

Sec. 28-112. – Enforcement

The following procedures shall be followed during enforcement actions. The fire marshal shall be responsible for enforcement of this article. The county marshal or his or her designee shall be authorized to issue a citation returnable to the magistrate's court for violation.

Any person who violates any provision of this Ordinance shall, upon conviction, be guilty of a violation of such ordinance and shall be punished in accordance with Section 1-12 and as it may be amended from time to time.