

## **A PROPOSED ORDINANCE TO REGULATE OPEN BURNING IN THE CITY LIMITS OF ASHVILLE, ALABAMA**

**WHEREAS**, the City Council of the City of Ashville, Alabama has determined that it is in the best interest for the public safety and welfare of the citizens of Ashville to establish certain controls on open burning within the corporate limits of the City of Ashville, Alabama in compliance with and in addition to those limitations imposed by County or State regulations.

**NOW THEREFORE, BE IT ORDAINED** by the City Council of the City of Ashville as follows:

No person shall ignite, cause to be ignited or maintain any open fire within the corporate limits or police jurisdiction of the City of Ashville, Alabama except as expressly permitted herein.

Authority to conduct open burning under the provisions of this ordinance does not exempt or excuse a person from the consequences, damages, or injuries which may result from such conduct, nor does it exempt or excuse a person from complying with all applicable laws, ordinances, regulations, and orders of governmental entities having jurisdiction, even though the open burning is conducted as specified by this ordinance.

### **SECTION 1. Exemptions allowed without a permit**

The following are allowed without written notification or authorization:

- a. Open fires maintained in a device designed for the cooking of food for human consumption,
- b. Fires set in salamanders or other devices designed for heating purposes utilizing wood, vegetation, coal, propane, kerosene, or fuel oil.
- c. Fires set for the purpose of abatement of a fire hazard, providing that such hazard is declared by the Fire Department,
- d. Fires ignited and maintained by the Fire Department for the purposes of training personnel in firefighting methods,
- e. Any other open burning specifically approved by the Fire Chief.

### **SECTION 2. Residential Burn Permits**

Open burning of class "A" fuels such as wood, paper, grass clippings, leaves, and tree trimmings (less than 3 inches in diameter) may be permitted provided that all of the following conditions are satisfied:

- a. A burn permit shall be obtained from the Ashville Fire Department;
- b. The property owner (or his/her agent) assures the Fire Department that the burning will be conducted on their residential property and will remain on their premises;
- c. the open burning will take place between the hours of 8am and 6pm;
- d. the fire will be supervised at all times by a person at least 18 years of age;
- e. suitable means to extinguish the fire such as a hose or fire extinguisher will be kept accessible during the time of burning;
- f. no trash, plastics, oils, vinyl, rubber, asphalt products, or anything other than class "A" fuels will be burned;
- g. burning will be conducted at least 50 ft. from the residence located on the premises, and at 200 ft. from any other occupied dwelling;
- h. burn piles are not to exceed 6x6 ft. in size and no higher than 3 ft;
- i. burning will not create a smoke hazard or nuisance

Residential burn permits will be valid for the time specified by the Fire Chief or his designee on the permit and may not exceed 3 days.

### **SECTION 3. Construction and Land Clearing Permits.**

Open burning of untreated lumber and vegetation for the purposes of construction, demolition, or clearing of land may be permitted provided that all of the following conditions are satisfied:

- a. the fuel being burned must originate from the property on which the burning is being conducted;
- b. no oils, asphalt products, vinyl, insulation, plastics, rubber, chemicals, or anything other than untreated wood or vegetation may be burned;
- c. Initial burning will be conducted between the hours of 8am and 6pm, with no additional fuel added between the hours of 3pm and 8am the next day.
- d. burning must not occur within 200 ft. of the nearest occupied dwelling other than the dwelling located on the property on which the burning is conducted;
- e. the open burning shall be supervised by at least one person who is at least 18 years old;
- f. if the open burning is contained by a fire break, such fire break shall be a minimum of 8 ft. wide and shall be cleared down to bare mineral earth;
- g. burning shall be conducted in conditions of good ventilation and when wind conditions carry smoke away from other built up areas and public roadways.
- h. fire control equipment such as hand tools, earth moving equipment, tractors, or hoses of appropriate size and capacity to contain the fire must be available on site;
- i. the site of the proposed burning must first be inspected and a written permit issued by the Ashville Fire Department.
- j. burning will not cause a smoke hazard or nuisance

Burn permits may be issued for up to 7 days and shall be valid for the time specified on the permit by the Fire Chief or his designee.

A permit fee of \$25 per day that the permit is valid shall be paid to the City Clerk before each Construction/Land Clearing permit is issued.

### **SECTION 4. Transfer of Permits.**

Open burning permits and authorizations provided by this Ordinance shall not be transferable whether by operation of law or otherwise, either from one location to another, or from one person to another.

### **SECTION 5. Display and Inspection of Permits.**

Permits shall be available for inspection at the open burning site by any city official who may request to see the permits.

### **SECTION 6. Denial of Permit Application.**

The Fire Chief may deny any application for a permit hereunder, if he deems the proposed burning to be dangerous to the health, welfare and safety of the residents of the City or its police jurisdiction, or to any property in the City or its police jurisdiction.

## **SECTION 7. Revocation of Burn Permits**

The Fire Chief or his designee may revoke any issued burn permit for failure to comply with any conditions of the issued permit or if continuance of the permit is not consistent with the purpose of this ordinance.

## **SECTION 8. Appeals to the City Council.**

Any person aggrieved by a denial or revocation of a burn permit may appeal to the City Council. Such persons shall file the grievance with the City Clerk's office to be placed on the agenda for the City Council for consideration.

## **SECTION 9. "No Burning" Orders.**

The Fire Chief may, during times of drought or dangerous fire conditions, issue temporary "no burn" orders. At these times, no burn permits shall be issued.

## **SECTION 10. Enforcement and Penalties**

Violation of this ordinance shall be deemed a misdemeanor offense and punishable as proscribed herein.

### **A. Complaint Procedure**

Any citizen or any duly authorized municipal employee or officer wishing to make a complaint related to the violation of this ordinance may present themselves to the City Magistrate to commence proceedings against the person alleged to be in violation of this ordinance. The Complainant must swear under oath that he/she personally observed the acts complained of and if in the opinion of the Magistrate the sworn testimony sets forth a violation of this ordinance, said magistrate shall cause a summons and complaint to be issued to the individual.

### **B. Service of Summons and Complaint by Law Enforcement Officer**

Any law enforcement officer of the City of Asheville or any law enforcement officer of the State shall be authorized to issue a summons and complaint to any person charged with a violation of this ordinance. Such summons and complaint shall be in lieu of custodial arrest. If the individual refuses to provide his or her written recognizance to appear in Court by signing the summons and complaint, the authorized officer shall place the person into custody and bring them before any officer or official authorized to approve bond.

### **C. Penalty**

When a person is convicted of violation of this ordinance, penalties will be assessed in pursuant to the following schedule, which may be amended from time to time by the City Council:

1. First violation within 12 months: \$150 plus court costs;
2. Second violation within 12 months: mandatory court appearance with a fine of up to \$500 but not less than \$250 plus court costs and expenses to be assessed by the court and up to six months in jail or both.

For the purposes of the above schedule, the 12 month period will commence upon conviction or settlement of each violation.

**SECTION 11. Repealer Clause.**

Any ordinance heretofore adopted by the City Council of the City of Ashville, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

**SECTION 19. Severability Clause.**

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

**SECTION 20. Effective Date.**

This Ordinance shall become effective immediately upon its adoption, approval, and publication as required by state law.

**Any questions regarding this proposed ordinance can be discussed with the Mayor and City Council at the next meeting, which is scheduled for Monday, November 3, 2014.**

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