

ORDINANCE NO. 09-006

AN ORDINANCE TO REPEAL SECTIONS 5.11(E), (F) AND (G)
AND TO CREATE 5.115 OF THE CODE OF ORDINANCES OF
THE TOWN OF SOMERS RELATING TO OUTDOOR BURNING

The Town Board of Supervisors of the Town of Somers, Kenosha County, Wisconsin, hereby repeals Sections 5.11(E), (F) and (G) of the Code of Ordinances of the Town of Somers relating to outdoor burning to read as follows:

5.115 OUTDOOR BURNING.

(A) **Purpose.** The purpose of this section is intended to promote the public health, safety and welfare and to safeguard the health comfort living conditions, safety and welfare of the citizens of the Town of Somers due to the air pollution and fire hazards of open burning and outdoor burning.

(B) **Applicability.**

(1) Generally this section applies to all outdoor burning and refuse burning within the Town of Somers.

(2) This section does not apply to burning in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation unless the material being burned includes refuse as defined in this section.

(3) This section does not apply to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.

(C) **Definitions.** The following definitions are applicable in this section:

(1) **Campfire.** A small outdoor fire intended for recreation or cooking not including a fire intended for disposal of waste wood or refuse. Maximum size of wood stack two (2') feet by two (2') feet by two (2') feet high.

(2) **Clean Wood.** 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 materials.

(3) **Confidential Papers.** Printed material containing personal identification or financial information that the owner wishes to destroy.

(4) **Fire Chief.** The Fire Chief of the Town of Somers, or other person authorized by the Fire Chief.

(5) **Outdoor Burning.** Open burning or burning in an outdoor wood-fire furnace.

(6) **Open Burning.** Kindling or maintaining a fire where the products of combustion are emitted directly into the ambient air without passing through a stack or chimney.

(7) **Outdoor Wood-fired Furnace.** A wood-fired furnace, stove or boiler that is not located within a building intended for habitation by humans or domestic animals.

(8) **Refuse.** Any waste material except clean wood.

(D) **General Prohibition on Open Burning, Outdoor Burning and Refuse Burning.**

(1) Open burning, outdoor burning and refuse burning are prohibited in the Town of Somers, unless the burning activity is specifically permitted by this section.

(2) Burning any substance in burn barrels, incinerators or similar devices shall be prohibited anywhere in the Town.

(E) **Materials That Shall Not Be Burned.** Unless specific written approval has been obtained from the Wisconsin Department of Natural Resources, the following materials shall not be burned in an open fire, incinerator, burn barrel, furnace, stove or any other indoor or outdoor incineration or heating device. The Town of Somers shall not issue a permit for burning any of the following materials without air pollution control devices and a written copy of an approval by the Wisconsin Department of Natural Resources.

(1) Rubbish or garbage including, but not limited to food wastes, food wraps, packaging, animal carcasses, animal waste (manure), paint or painted materials, furniture, composite shingles, construction or demolition debris or other household or business wastes.

(2) Waste oil or other oily wastes except used oil burned in a heating device for energy recovery, subject to the restrictions of NR 590, Wis. Admin. Code.

(3) Asphalt and products containing asphalt.

(4) Treated or painted wood including, but not limited to, plywood, composite wood products or other wood products that are painted, varnished or treated with preservatives.

(5) Any plastic material including, but not limited to, nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, plastic films and plastic containers.

(6) Rubber including tires and synthetic rubber-like products.

(7) Newspaper, corrugated cardboard, container board, office paper and other materials that must be recycled in accordance with the recycling ordinance.

(F) **Open Burning of Leaves, Brush, Clean Wood and Other Vegetative Debris.**

Open burning of leaves, weeds, brush, stumps, clean wood, or other dry vegetative debris is allowed only in accordance with the following provisions:

(1) All allowed open burning shall be conducted in a safe, nuisance free manner, when wind and weather conditions are such as to minimize adverse effects and not create a health hazard or a visibility hazard on roadways, railroads or airfields. Open burning shall be conducted in conformance with all local and state fire protection regulations.

(2) Except for barbecue, gas and charcoal grills, no open burning shall be undertaken during periods when either the Fire Chief or the Wisconsin Department of Natural Resources has issued a burning ban applicable to the area.

(3) Open burning shall be conducted only on the property on which the materials were generated.

(4) Unless explicitly allowed elsewhere in this section, a commercial enterprise may open burn only at a facility approved by and in accordance with the provisions established by the Fire Chief and the Wisconsin Department of Natural Resources.

(5) Open burning of weeds or brush on agricultural or conservancy lands is allowed if conducted in accordance with other applicable provisions of this section.

(6) Outdoor campfires and small bonfires for cooking, ceremonies or recreation are permitted, provided that the fire is confined by a control device or structure such as fire ring or fire pit. Bonfires are allowed only if approved by and in accordance with provisions established by the Fire Chief.

(7) Burning of trees, stumps, limbs, brush or weeds for clearing or maintenance of rights-of-way is allowed if approved by the Fire Chief and if in accordance with other provisions of this section.

(8) In emergency situations such as natural disasters burning that would

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otherwise be prohibited is allowed if specifically approved by the Wisconsin Department of Natural Resources.

(9) Open burning under this section shall be conducted only following issuance of, and in accordance with a permit issued under subsection (J) below.

(10) When burning more than a four (4') foot by four (4') by four (4') high pile or burning any open land or field, the Fire Department must be notified and inspection scheduled before the burn can start.

(11) Open burning shall only be conducted at a location at least twenty-five (25') feet from the nearest building which is not on the same property.

(12) Open burning shall only be conducted at a location at least twenty-five (25') feet from the nearest building on the same property, except for barbeque, gas and charcoal grills or screened fire pits. Gas or charcoal barbeque grills, or screened fire pits, may not be operated within ten (10') feet from any combustible material, combustible wall or partition, exterior window opening, exit access or exit unless authorized by the Fire Chief.

(13) Barbeque, gas and charcoal grills or screen fire pits may not be used on any second story or higher balconies, porches or landings.

(14) Except for campfires, permitted bonfires or fires in approved fire pits, open burning shall be conducted only during daylight hours.

(15) Open burning shall be constantly attended and supervised by a competent person of at least eighteen (18) years of age until the fire is extinguished and is cold. The person shall have readily available for use such fire extinguishing equipment as may be necessary for the total control of the fire.

(16) No materials may be burned upon any street, curb, culvert, gutter or sidewalk or on the ice of a lake, pond, stream or water body, or in areas identified as having soil with high peat content.

(17) No open burning may be conducted on days when the Wisconsin Department of Natural Resources has declared an ozone action day applicable to Kenosha County.

(18) Flammable liquids shall not be used to start or propagate any open burning regulated by this section.

(19) Fires set for forest, prairie or wildlife habitat management are allowed with the approval of the Wisconsin Department of Natural Resources.

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(G) **Outdoor Wood-fired Furnaces.** An outdoor wood-fired or solid-fuel furnace may be installed and used in the Town of Somers only in accordance with the following requirements.

- (1) The outdoor wood-fired or solid fuel furnace shall be installed and used only in an area zoned for agricultural or conservancy use.
- (2) The outdoor wood-fired or solid fuel furnace shall not be used to burn any of the prohibited materials listed in subsection (E).
- (3) Location. The outdoor wood-fired or solid fuel furnace shall be located at least five hundred (500') feet from the nearest building that is not on the same property as the outdoor wood-fired furnace.
- (4) The outdoor wood-fired or solid fuel furnace shall have a chimney that extends at least fifteen (15') feet above the ground surface. If there are any residences within five hundred (500') feet, the chimney shall also extend at least as high above the ground surface as the height of the roofs of all such residences. The Fire Chief may approve a lesser height on a case-by-case basis if necessary to comply with the manufacturer's recommendations and if the smoke from the lower chimney height does not create a nuisance for neighbors.
- (5) An annual permit for the use of an outdoor wood-fired furnace is not required.
- (6) Existing outdoor wood-fired or solid fuel furnace installations (as of May 1, 2009) will not be subject to the distance limitations listed in this section until or unless repairs or replacement of existing equipment or facilities would exceed fifty (50%) percent of the cost of a new installation.

(H) **Fire Department Practice Burns.** The Town of Somers Fire Department may burn a standing building if necessary for firefighting practice and if the practice burn complies with the requirements of the Wisconsin Department of Natural Resources.

(I) **Exemption For Burning Certain Papers.**

- (1) Notwithstanding the other provisions of this section, paper and cardboard products may be used as a starter fuel for a fire that is allowed under this section.
- (2) Small quantities of confidential papers from a residence may be burned if necessary to prevent the theft of financial records, identification or other confidential information.
- (3) Confidential papers from a commercial enterprise shall be shredded or destroyed in a manner other than burning.

(J) **Burn Permits.**

(1) No person shall start or maintain any open burning without a burning permit issued by the Fire Chief of his/her designee. This section shall not apply to leaves and plant clippings, lawn residue, etc., which may be burned on the owner's land or in an adjacent ditch for a period of thirty (30) days commencing April 15 and continuing through May 15 and in the fall for forty-five (45) days commencing on October 15 and continuing through November 30.

(2) The owner or occupant of the property shall obtain an annual burning permit. Annual burning permits expire on December 31 of each year. Burning permits may be obtained at the Town Hall during normal working hours.

(3) Permit fees shall be as follows:

(a) Original permit fees shall be Twenty-five (\$25.00) Dollars.

(b) Annual renewals will be Fifteen (\$15.00) Dollars.

(4) Every day before burning a permit holder must call the information number on the permit. The permit holder will be told if they can burn on that day. If the prerecorded message states that burning is prohibited on the given day, NO BURNING IS ALLOWED.

(5) When weather conditions warrant, the Fire Chief or the Wisconsin Department of Natural Resources may declare a burning moratorium on all open burning and temporarily suspend previously issued burning permits for open burning.

(6) A burning permit issued under this section shall require compliance with all applicable provisions of this section and any additional special restrictions deemed necessary to protect public health and safety. Any violation of the conditions of a burning permit shall be deemed a violation of this section. Any violation of this section or the burning permit shall void the permit.

(7) Annual burn permits are not required for outdoor campfires for cooking, ceremonies or recreation, gas or charcoal barbecue grills or screened fire pits. All other applicable parts of this section apply.

(K) **Liability.** A person utilizing or maintaining an outdoor fire shall be responsible for all fire suppression costs and any other liability resulting from damage caused by the fire.

(L) **Right of Entry and Inspection.** The Fire Chief or any authorized officer, agent, employee or representative of the Town of Somers who presents credentials may inspect any property for the purpose of ascertaining compliance with the provisions of this section. (Note: if the owner or occupant

of the premises denies access to the property for this purpose, a special inspection warrant may be obtained pursuant to the Wisconsin Statutes.)

(M) **Enforcement and Penalties.**

(1) The Fire Chief and the officers/members of the Town of Somers Fire Department are authorized to enforce the provisions of this section.

(2) Any person who shall be in violation of this section of this ordinance shall upon conviction forfeit not less than One Hundred (\$100.00) Dollars, plus costs of prosecution and in default of payment thereof, imprisonment in the county jail for not more than ten (10) days. Each day of violation shall constitute a separate offense.

(N) **Effective Date.** This section shall become effective on the 1 day of August, 2009. However, no fees shall be required to be paid pursuant to subsection (J)(3) above until January 1, 2010.

Dated at Somers, Wisconsin, this 23 day of June, 2009.

TOWN OF SOMERS

By: James M. Smith
James Smith, Chairperson

Attest: Tim Kitzman
Tim Kitzman, Clerk/Treasurer

