

ORDINANCE NO. 2011-4

An Ordinance Regulating Open Burning In The Town of Sweetser, Indiana And Providing Penalties For Violations Of Such Regulations

WHEREAS, the burning of leaves and other residential trash has traditionally been tolerated as an acceptable means of disposal;

BUT, in recent years public awareness has greatly increased with regard to the source of pollutants in our environment; and,

WHEREAS, it is quite evident that burning in general, including clean wood products, generates smoke which by its nature contains pollutants and contaminants to the environment that are harmful to human and animal life; and,

WHEREAS, said pollutants are a danger to the health, safety, and welfare of all citizens of Sweetser, Indiana; and,

WHEREAS, the health and safety factors far outweigh the traditional tolerance of burning trash as a means of trash disposal.

NOW, THEREFORE, BE IT ORDAINED by the Sweetser Town Council that Ordinance No. 2011-4 is hereby adopted as follows:

1. Open burning is defined as the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the air, without passing through a stack or chimney from an enclosed chamber.

For the purposes of this section the following additional definitions shall apply unless the context clearly indicates or requires a different meaning:

ADEQUATE CONTAINER: A non-combustible, 55-gallon barrel or drum sufficiently vented to induce adequate primary combustion air with enclosed sides, a bottom and a mesh covering with openings no larger than 1/4" square.

AIR POLLUTANTS: Any substances such as cinder fly ash, smoke fumes, gas mist and offensive odors.

AIR POLLUTION: The presence in the outdoor atmosphere of substances in quantities, having characteristics and being of duration which are with reasonable certainty injurious to human life and property or which unreasonably interfere with the enjoyment of life and property due to the emission of odors, vapors, liquids or gases.

COMBUSTIBLE MATERIALS: Any waste or substance which is easily inflammable such as tree leaves, papers, cartons, paper boxes dry limbs or dry grass cuttings.

ENFORCEMENT OFFICER: The Town Marshal or his designated agents.

NON-COMBUSTIBLE MATERIALS: Any waste material or substance not easily flammable, such as clothing, bedding, garbage, fresh grass clippings, fresh tree leaves, mattresses, tires or other rubber products, automobile hunks, furniture, rugs, rags, cans, waste foodstuff, dead animals, animal excrement, sawdust and any material which is subject to slow combustion usually emitting smoke, offensive odors, fumes, gases or similar pollutants.

NUISANCE: Environmental conditions, intermittent or continuous, produced or correctable by a person, prejudicial to the reasonable enjoyment of health, comfort or safety of an individual or causing injury or damage to persons and property.

SMOKE: Any small gas borne particles resulting from incomplete combustion and present in sufficient quantity to be visually observable.

SOURCE: Any real or person property or person contributing to air pollution.

VIOLATOR: A person contributing to air pollution in violation of standards established in this section.

2. No person shall start, kindle, cause, allow or maintain any form of open burning of any materials on private or public property, except as specifically authorized by this ordinance. No person shall allow the accumulation or existence of combustible material that constitutes to open burning.

3. Exemptions: The following types of burning are allowed:

a. Outdoor cooking. The burning of charcoal, clean untreated wood, and other cooking fuels customarily used in an outdoor grill, traditional food cooking devices, or campfires.

b. Fires used for recreational or ceremonial purposes such as school pep rally fires or the celebration of scouting activities. Recreational or ceremonial fires shall meet the following conditions:

i. Only clean untreated wood or charcoal shall be used. Paper or petroleum products can be used for ignition purposes only.

- ii. The fire shall not be ignited more than 2 hours before the recreational activity is to take place and shall be extinguished upon the conclusion of the activity.
 - iii. The pile to be burned shall be less than 1000 cubic feet (for example: 10ft. x 10ft. x 10ft.).
 - iv. The local fire department shall be notified 24 hours in advance if the pile to be burned is more than 125 cubic feet (for example: 5ft. x 5ft. x 5ft.).
 - v. The fire shall not be for disposal purposes.
 - vi. The fire shall not be within 500 feet of a pipeline or fuel storage area.
- c. Burning of combustible materials. Burning of combustible materials in an adequate container is permitted only in the following instances:
- i. The burning takes place on property which contains either no buildings or structures or which contains a residential structure with no more than two units. No burning may take place in apartment complexes or mobile home parks.
 - ii. The burning takes place at a distance of five or more feet from any combustible product, including buildings, automobiles or any structure;
 - iii. The burning does not take place on the sidewalks, streets or on the grounds in front of the building.
4. The following conditions apply to all exemptions and variances:
- a. Only wood and paper products shall be burned.
 - b. Fires shall be attended at all times until completely extinguished.
 - c. Fires shall be extinguished if the Enforcement Officer, Fire Department or their designee determines that they are a nuisance, fire hazard or air pollution problem.
 - d. All burning of combustible materials in adequate containers described above must occur between 6:00 a.m. and 7:00 p.m. and shall be totally extinguished at 7:00 p.m. If the daylight hours end before 7:00 p.m., the fire must be extinguished when the daylight hours end.

e. No burning shall be conducted during unfavorable meteorological conditions such as temperature inversions, high winds or stagnation. The Fire Department and/or Enforcement Officer may determine that meteorological conditions are unfavorable for burning and may order that any and all fires be extinguished at such times.

5. Any person found in violation of this ordinance shall be subject to the following procedures:

a. The Town Marshal or his designated agents shall issue a warning notice to a first-time violator stating that he or she is in violation. The person must then correct the violation immediately by extinguishing the fire. Failure or refusal to immediately extinguish the fire shall result in a citation being issued.

b. Upon conviction of the citation, the violator shall be fined not less than Twenty-Five Dollars (\$25.00) for the first offense, Seventy-Five Dollars (\$75.00) for the second offense, One Hundred Twenty-Five Dollars (\$125.00) for the third offense and Two Hundred Dollars (\$200.00) for the fourth offense. The violator shall pay all attorney fees, expert's fees and court costs incurred by the Town of Sweetser enforcing this Ordinance 2011-4.

c. Failure or refusal by the violator to immediately extinguish the fire in violation of this ordinance shall also result in the Fire Department having the authority to go upon private property to extinguish said fire.

d. Each subsequent starting, kindling, causing or allowing of a new fire after a warning notice or citation has been issued, shall be considered a separate offense.

e. Liability for fire: Any person who allows the accumulation or existence of combustible material which constitutes or contributes to open burning may not refute liability for violation of this ordinance on the basis that said fire was set by vandals, accidental, or act of God.

6. The open burning provisions are enforceable by the duly appointed Town Marshal or his designated agents within the Town of Sweetser, acting on his/her own initiative or at the request of the Town Council.

7. This ordinance shall be in full force and effect from and after its passage by the Town Council and legal publication.

ADOPTED this 12~~th~~ day of January, 2012 by the Town Council of Sweetser, Indiana.


Town Council of Sweetser, Indiana



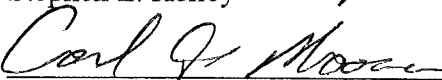
Charles V. Briede



Travis J. LeMaster



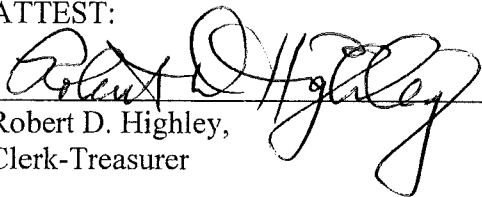
Stephen L. Kelley



Carl D. Moorman



ATTEST:



Robert D. Highley,
Clerk-Treasurer

This instrument was prepared by KIM A. ROGERS, ROGERS & ROGERS, P.C., 525 South Washington Street, Marion, IN 46953.