

COMMONWEALTH OF KENTUCKY
OLDHAM COUNTY
ORDINANCE KOC 05-320-315

AN ORDINANCE REPEALING AND REPLACING ORDINANCE KOC 91-300-320-7 RELATING TO OPEN BURNING IN OLDHAM COUNTY, KENTUCKY.

* * * * *

WHEREAS, the Fiscal Court has the authority pursuant to KRS 76.083(3) (a), (h) and (u), to enact ordinances to cause the abatement of nuisances; to conserve, preserve and enhance natural resources including soils, water, air, vegetation and wildlife; to provide fire protection; and,

WHEREAS, the burning of material upon privately owned property without proper precaution or notification of fire protection agencies creates conditions that are adverse to the health and welfare of residents of Oldham County, are damaging to natural resources including air and vegetation of Oldham County and causes unnecessary responses by the fire and emergency agencies of Oldham County, Kentucky; and,

WHEREAS, Oldham County has previously adopted an ordinance relating to open burning in Oldham County, Kentucky, #KOC 91-300-320-7; and,

WHEREAS, the previous ordinance may be in conflict with State regulations and laws; and,

WHEREAS, Oldham Fiscal Court wishes to rectify any conflict.

NOW, THEREFORE, be it ordained by the Fiscal Court of Oldham County, Kentucky that the previous ordinance is repealed and the following ordinance is adopted:

SECTION 1: APPLICABILITY

The provisions of this ordinance are applicable to all open burning as defined in Section 2 and not elsewhere subject to regulation of Natural Resources, laws of the Commonwealth of Kentucky or local ordinance.

SECTION 2: DEFINITIONS

Terms not defined in this section shall have the meaning given them in 401 KAR 63:001.

(1) “Fire training” means the instruction of industrial, public and private firefighters conducted in accordance with safety standards and procedures as accepted by the Kentucky Fire Commission, Kentucky State Fire Marshall or the National Wildfire Coordinating Group.

(2) “Garbage” means putrescible animal and vegetable matter accumulated by a family in a residence in the course of ordinary day to day living.

(3) “Governor Declared Emergency” means any incident or situation declared to be an emergency by executive order of the Governor in the Commonwealth pursuant to the provisions of KRS Chapters 39A to 39F.

(4) “Household rubbish” means paper waste material and trash, not to include garbage, cans, glass, plastic, furniture, appliances or other potentially hazardous waste materials, normally accumulated by a family in a residence in the course of ordinary day to day living.

(5) “Land clearing” means clearing of land for agricultural or residential, industrial, commercial development purposes, including the construction of roads.

(6) “Open burning” means the burning of any matter without a burn chamber approved by the Kentucky Division for Air Quality or without a stack or chimney with control devices approved by the Kentucky Division for Air Quality.

(7) “Debris Piles” means trees, limbs, tree root balls and other vegetative matter put there for the purpose of immediate disposal and originating from that parcel of land.

(8) “Recognized agricultural, silvicultural, range or wildlife management practices” means burning recognized by the Kentucky Department of Agriculture, the United States Department of Agriculture, the Kentucky Division of Forestry, the United States Forest Service, the Kentucky Department of Fish and Wildlife, or the United States Fish and Wildlife Service as necessary to promote cultivation of crops, range and forest lands, weed and under story abatement and pest control and prevention.

(9) “Wood Waste” means untreated wood and untreated wood products, including tree stumps (whole or chipped), felled trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings and shavings. Wood waste does not include:

- (a) Yard waste;
- (b) Construction, renovation or demolition waste; or
- (c) Clean lumber

(10) “Yard waste” means grass, grass clippings, bushes, shrubs and clippings of bushes and shrubs, which come from residential, commercial, retail, institutional or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include:

- (a) Construction, renovation and demolition waste; or

- (b) Clean lumber.

SECTION 3. PROHIBITION OF OPEN BURNING

Except as provided in this section open burning is prohibited. Fires may be set for the purposes specified in this section throughout the year in any county, or portion of a county, of the Commonwealth except in areas designated or previously designated moderate non-attainment for ozone pursuant to 401 KAR 51:010, or areas designated or previously designated non-attainment for the 8 hour ozone or PM_{2.5} (particulate matter) national ambient air quality standard, pursuant to 401 KAR 51:010 if the fires do not violate KRS Chapters 149, 150, 227, other laws of the Commonwealth of Kentucky or the federal government, or local ordinances. No extraneous materials such as tires or heavy oil, which tend to produce dense smoke, shall be used to cause ignition or aid combustion. Burning shall be done on days when conditions do not pose a threat of igniting a forest fire, and all allowable fires shall be continuously monitored and maintained so as not to present a danger to human health, safety or the environment.

Purposes for which open burning is allowed are:

- (1) Fires set for the cooking of food for human consumption;
- (2) Fires set for recreational or ceremonial purposes;
- (3) Small fires set by construction and other workers for comfort heating purposes if:
 - (a) the ambient temperature is below 50 degrees Fahrenheit;
 - (b) excessive or unusual smoke is not created;
 - (c) only clean lumber or vegetative matter is burned; and
 - (d) the fire is burned in a container not exceeding 55 gallons in size.

(4) Fire set for prevention of a fire hazard, including the disposal of dangerous materials if no safe alternative is available; notice to Oldham County Dispatch and Cabinet for Natural Resources and Environmental Protection is required.

(5) Fires Training of public and industrial employees in the methods of fighting fires; Notice to Oldham County Dispatch and Cabinet for Natural Resources and Environmental Protection required.

(6) Fires set for recognized agricultural, silvicultural, range, or wildlife management practices.

(7) Fires set by individual homeowners for burning of leaves.

(8) Fires set for disposal of household rubbish, not to include garbage, originating at dwelling of five (5) family units or less, if the fire is attended and monitored by an occupant of the dwelling.

(9) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if not other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning.

(10) Fires set for disposal of natural growth for land clearing and trees and tree limbs felled by storms and shall be limited to two (2) contiguous acres.

(11) Fires set for the disposal of debris as a result of an officially declared emergency or disaster, except in those instances where this sixty (60) day deadline falls in the months of May, June, July, August, or September, in ozone non-attainment counties or counties previously designated non-attainment for ozone. Open burning of this material in these counties is prohibited from May 1 through September 30.

SECTION 4. ADDITIONAL RESTRICTIONS

Additional restrictions for counties, or portions of counties, designated or previously designated non-attainment for particulate matter for those counties, or portions of counties, which are, or were previously, designated moderate non-attainment for ozone pursuant to 401 KAR 51:010, or those counties, or portions of counties, which are or were designated non-attainment for the 8-hour ozone or PM_{2.5} (particulate matter) national ambient air quality standard, pursuant to 401 KAR 51:010. Fires may be set according to provisions of Section 3 of this ordinance except during the months of May, June, July, August and September. During these months the only open burning activities allowed are:

- (1) Fires set for the cooking of food for human consumption;
- (2) Fires set for prevention of a fire hazard, including disposal of dangerous materials if no safe alternative is available;
- (3) Fires set for recognized agricultural, silvicultural, range, or wildlife management practices;
- (4) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet and Oldham County Fiscal Court prior to burning;
- (5) Fires set for recreational or ceremonial purposes; and
- (6) Open burning shall comply with the fire hazard season requirements of KRS 149.400.

(7) No open burning will be allowed if the Governor of the State of Kentucky or the Oldham County Judge Executive has declared a “Fire Emergency”.

Open burning for land clearing purposes associated with residential, commercial, or industrial development shall be limited to two (2) contiguous acres at any one time.

SECTION 5. REQUIREMENTS FOR PROPOSED BURNING OF DEBRIS PILES

Any proposed debris burn site that covers an area larger than 400 square feet or piled higher than 10 feet will require a permit and must conform to the following rules:

(1) Applications for permits must be applied for at least fifteen (15) days before the scheduled burn is to take place. Permits can only be issued by the Office of the Oldham County Solid Waste Coordinator or his/her assistant.

(2) A fee of \$50.00 shall be collected by the Coordinator.

(3) Proposed burning sites shall:

(a) Not be located in a flood plain, sinkhole, major drainage channel, or within two hundred fifty (250) feet of any water of the Commonwealth;

(b) Be located a safe distance from any residence, school, hospital, or business and be a safe distance away from overhead and underground utilities;

(c) Not be located in proximity to any vegetation or man-made matter so as to create a potential fire hazard.

(4) All debris piles that are permitted shall:

(a) Have adequate fire lanes to allow access to fire and emergency vehicles and heavy equipment;

(b) Must be attended at all times;

(c) Attendant must have equipment on hand to prevent the spread of fire.

(5) Burning shall occur only when the prevailing winds direct smoke away from any residence, school, hospital or business.

(6) The use of accelerants (oil, tires, diesel fuel or any petroleum product) is strictly prohibited.

SECTION 6. EXCEPTION OR EXCLUSIONS FOR PERMITS

An event declared an emergency by the Governor or the Oldham County Judge/Executive.

SECTION 7. PROCEDURES FOR BURNING APPROVED DEBRIS RESULTING FROM AN EVENT DECLARED AS AN EMERGENCY OR DISASTER BY THE GOVERNOR.

The following procedures shall be followed when burning debris from an event declared to be an emergency or disaster by the Governor or County Judge/Executive:

(1) Burning shall occur only when the prevailing winds direct smoke away from any residence, school, hospital or business;

(2) The location of the burn shall have adequate fire lanes to allow access for fire and emergency vehicles and heavy equipment and:

(a) Must be attended at all times.

(b) Sufficient equipment shall be on site to prevent spread of fire.

SECTION 8. CONTROL OF PERMISSIBLE OPEN BURNING

Any permissible open burning must be supervised while in progress. Reasonable precautions shall be taken by the person setting the fire to prevent unwanted spread of fire.

SECTION 9. SEVERABILITY CLAUSE

If any part of this Ordinance shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this ordinance.

SECTION 10. PENALTIES

If the owner, lessee, occupant or person having change of any property shall intentionally burn any material or property in violation of this ordinance, upon conviction thereof, shall be fined not less than Fifty (\$50.00) Dollars nor more than One Thousand (\$1,000.00) Dollars for each offense on each day burning is allowed and continued.

SECTION 11. MISCELLANEOUS

(1) Notice to Oldham County Dispatch, as required by this ordinance, shall not be construed to mean that the open burning complies with the provisions of this ordinance, other local ordinances, or state laws or regulations. Notification to Oldham County Dispatch does not imply consent or permission to burn. Notification is merely an alert to prevent possible unnecessary runs by any Fire Department or law enforcement agency.

(2) Nothing in this Ordinance is to be construed as to prevent the Cabinet for Natural Resources and Environmental Protection and the Division of Forestry from enforcing any statute or regulation adopted pursuant to their authority.

(3) Any person responsible for an illegal fire and a resulting fire response by an Oldham County Fire Department shall be responsible for the cost of said run and any fire fighting procedures initiated by that Fire Department.

(4) Upon notification, Oldham County Fire Departments are hereby allowed to enter upon private property and extinguish any illegal fire upon the authority of the Oldham County Judge/Executive or an appointed designee.

This ordinance shall become effective upon its passage and advertisement according to law.

Dated this 6th day of December, 2005

Signed Original on File
MARY ELLEN KINSER
Oldham County Judge/Executive

ATTEST:

Signed Original on File
SHARON HERNDON
Oldham County Fiscal Court Clerk

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OLDHAM COUNTY
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Dated this 6th day of December, 2005

Signed Original on File
MARY ELLEN KINSER
Oldham County Judge/Executive

ATTEST:

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SHARON HERNDON
Oldham County Fiscal Court Clerk