



Washington Police Department

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TO: Mayor Manier and the Washington City Council
FROM: Chief of Police Michael D. McCoy and Deputy Chief Jeff Stevens
RE: Changes to the Open Burning Ordinance, Chapter 93.02

Mayor and Aldermen,

Open burning, particularly of landscape waste, is an issue that evokes significant feelings in Washington and other communities. There are quality of life concerns on both sides of the issue and those concerns have little middle ground. The original 1986 ordinance was an attempt to codify rules that allowed for some burning for its efficiency, enjoyment, and liberty interests, while giving some respite to the significant population that can be negatively affected by burning and particularly by smoke from irresponsible burning.

The attached ordinance takes the community experience of the more than 30 years since the passage of the original ordinance, including input from residents and attempts at solutions from other communities, and attempts to provide understandable best practices for open burning in general, as well as certain types of open burning. It is an attempt to recognize and normalize what middle ground there is in this debate.

The greatest of the negative effects of open burning, as judged by complaints received, come from irresponsible burning resulting in excessive or noxious smoke. This ordinance addresses this issue and provides a balanced approach to burning. It represents what we understand as a compromise solution. Key points were largely distilled from Council and public input, input that was well represented at the Committee of the Whole meeting this month.

Key changes in this ordinance:

- Limitation of landscape waste burning to October through May, and 7 A.M. – 5 P.M., limiting fire dangers during summer and smoke issues during the height of outdoor activity months.
- Protecting recreational fires, which, properly conducted produce little detectable smoke.
- Providing rules to limit noxious smoke, including a prohibition on burning wet or green material, grass clippings, or waste.
- Requiring City permits for fires larger than recreational fires, helping to ensure that those setting larger fires are cognizant of requirements.
- Prohibiting smoldering fires, seen as producing significant smoke without the benefits of efficient burning.

The full text of the suggested change is attached.

ORDINANCE NO. _____

Synopsis: The following ordinance would limit the times of landscape waste burning, protect recreational fires, provide rules limiting noxious smoke, require permits for fires larger than recreational fires, and prohibit smoldering fires.

AN ORDINANCE AMENDING CHAPTER 93 OF THE CODE OF ORDINANCES OF THE CITY OF WASHINGTON, ILLINOIS, ENTITLED "FIRE PREVENTION," BY ADJUSTING OPEN BURNING REQUIREMENTS, REQUIRING SOME PERMITS, AND REDUCING ALLOWABLE TIMES FOR BURNING LANDSCAPE WASTE

WHEREAS, the City Code of Ordinances, Chapters 93 provides for regulation of among other things, open burning; and

WHEREAS, Open burning can be an efficient method for disposal of landscape waste when properly and courteously done, and

WHEREAS, The City of Washington recognizes that substantial harms can result from uncontrolled open burning, and

WHEREAS, it is desirous that proper burning practices are followed, and

WHEREAS, it is deemed to be in the best interest of the residents of the City that Chapter 93, Section 93.02 be revised to protect the interests of the City, its residents, and visitors:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WASHINGTON, TAZEWELL COUNTY, ILLINOIS, an Illinois home rule municipality, as follows:

Section 1. That § 93.02 detailing Open Burning be deleted in its entirety and the following inserted in lieu thereof as said sections:

§ 93.02 OPEN BURNING

(A) Open Burning Regulatory Authority

The Chief of the Washington Volunteer Fire Department or his or her authorized agent may prohibit the open burning of landscape waste, or any other open burning, at any location in the City when the atmospheric conditions or other conditions at the location of the fire constitute a hazard, or when the fire creates excessive smoke or flying ash which presents a hazard to persons or property in the vicinity. For the purpose of this prohibition, whether a hazard exists or would exist is the sole determination of the Chief or his or her agent.

(B) Definitions

Campfire: Same as Recreational Fire.

Bonfire or Ceremonial Fire: An intended fire which at any time exceeds the space or size requirements of a recreational fire and is built in the open air in conjunction with a controlled gathering or ceremony.

Garbage: Waste resulting from the handling, processing, preparation, cooking and consumption of food, and the waste from the handling, processing, storage and sale of produce.

Open Burning: “Open burning” or “open fire” shall mean a fire burning in manner, whether concentrated or dispersed, which is not contained within a fully enclosed fire box or structure, from which the products of combustion are emitted directly to the atmosphere without passing through a stack, duct, or chimney.

Open Burning Permit: “Open burning permit” means a permit for open burning issued by the Illinois Environmental Protection Agency, authorizing fires and setting conditions therefore.

Recreational Fire: “Recreational fire” means a fire of vegetative material set for cooking, warming, ceremonial or social purposes, set within an area no larger than a three 3-foot diameter circle (measured from the inside of the fire ring or border). The maximum height of material in a recreational fire shall not exceed 3 feet. The fire must be completely surrounded, to a distance of at least 5 feet from its base, by non-combustible and non-smoke or odor producing material, either of natural rock, cement, brick, tile or block of ferrous metal only. Outdoor fireplaces, fire pits, and devices manufactured to contain a recreation/camp fire are included. Burners (burn barrels) and cooking devices such as manufactured hibachis, charcoal grills, compressed wood pellet grills, wood smokers, and propane or natural gas devices, are not camp or recreational fires as defined herein.

Running Fire: An attended prescribed burn as defined in the Illinois Prescribed Burning Act (525 ILCS 37/ et seq), as amended from time to time.

Starter Fuels: “Starter fuels” mean dry untreated, unpainted wood or charcoal fire starter, paraffin candles, alcohols, and the flame from a propane torch. Starter fuels are permitted as aids to ignition only.

Vegetative Material: As pertains to this ordinance, “vegetative material” means dry, clean fuel such as twigs, branches, limbs, charcoal, cordwood, untreated/unpainted lumber that contains no glues or resins, and manufactured fireplace logs. It does not include material that is green, with leaves or needles, rotten, wet, oil soaked, or treated with paint, glue, or preservatives. Paper and cardboard are not considered vegetative materials.

Landscape Waste: All accumulation of shrubbery cuttings, leaves, tree limbs and other materials, excluding turf grass, accumulated as a result of the care of lawns, shrubbery, vines, and trees.

Refuse: Waste.

Waste: Any garbage or other discarded matter or material, including solid, liquid, semi solid, or contained gaseous materials.

(C) Smoldering Fires Prohibited:

In all cases, smoldering fires without constant visible flame, no matter what materials are being burned, are prohibited and must be extinguished immediately (except for prairie, forestry, or wildlife management burns conducted in accordance with all other requirements of this ordinance).

(D) Open Burning Prohibited

Except as otherwise provided herein, open burning shall be prohibited within the City of Washington. Open burning is declared to be the responsibility of any person owning or controlling the property on which the fire occurs, and any person setting, attending, or contributing to such fire.

(E) Exceptions

Open burning of the types, and subject to the conditions hereinafter stated shall be exempt from the prohibition of Section (D) of this ordinance. Exemption to conduct fires under this section does not excuse a person from the consequences, damages, or injuries which may result therefrom nor does it exempt any person from regulations promulgated by the Illinois Environmental Protection Agency or any other governmental unit exercising jurisdiction in matters of pollution or fire hazard regulation.

1. Recreational fires.
2. Fires in authorized containers used solely for food preparation or warmth, including charcoal, gas, propane, compressed wood pellet, or electric grills, camp stoves, manufactured hibachis, and wood smokers using the described proper fuels.
3. Fires under managed supervision for which an open burning permit has been obtained, but limited to the following:
 - i. Burning to dispose of vegetative matter for managing forest, prairie, or wildlife habitat, and in approved agricultural practices.
 - ii. Burning to develop and maintain land and rights-of-way where chipping, composting, land spreading, or alternative methods are not practical.
 - iii. Burning to dispose of diseased trees generated on site, diseased or infected nursery stock, or diseased beehives.
 - iv. Fires set for the elimination of a fire hazard that cannot be abated by any other practical means.

- v. Fires purposely set for the instruction and training of public and industrial firefighting personnel.
 - vi. Burning at a designated tree and brush open burning site by authorized City staff.
- 4. Landscape Waste Fires conducted in accordance with this Ordinance.
 - 5. Bonfires or Ceremonial fires conducted in accordance with this Ordinance.
 - 6. Running fires authorized by a City Fire Permit.

(F) Landscape Waste Fires

- 1. The open burning of landscape waste within the city is prohibited except as follows:
 - i. The open burning of landscape waste shall be permitted only between 7:00 A.M. and 5:00 P.M. of each day, but shall be prohibited from June 1 through September 30 and on the following enumerated holidays: New Year's Day, Easter, Memorial Day, Fourth of July, Labor Day, Halloween, Thanksgiving and Christmas. The City Council may, by resolution passed within the calendar year of the exemption, provide for lawful open burning of landscape waste for any portion of time between June 1 and September 30, excepting enumerated holidays. The exemption provided by such a resolution shall be an affirmative defense to a charge of unlawful burning of landscape waste.
 - ii. The open burning of landscape waste may only be permitted on private property, with the consent of the owner or person in charge of the property and in accordance with this Section. The term "landscape waste" excludes cut grass.
 - iii. No person shall burn any landscape waste unless such fire is at least 20 feet from any structure.
 - iv. No person shall burn, and no person owning or in control of property shall permit the burning of, landscape waste generated on another property.
 - v. Any fire resulting from the burning of landscape waste shall be constantly attended by a competent person until such fire is extinguished and a method to extinguish any such fire shall be immediately available in the vicinity of the fire.
 - vi. The Chief of the Washington Volunteer Fire Department or his or her authorized agent may prohibit the open burning of landscape waste any location in the City when the atmospheric conditions or other conditions at the location of the fire constitute a hazard, or when the fire creates excessive smoke or flying ash which presents a hazard to persons or property in the vicinity. For the purpose

of this prohibition, whether a hazard exists or would exist is the sole determination of the Chief or his or her agent.

- vii. Between 7:00 A.M. and 4:00 P.M. on days when school is in session, no smoke from a landscape waste fire shall intrude on or over the property of any public or private elementary or secondary school property in or adjoining the City.
 - viii. No landscape waste fire shall be suffered to smolder or emit smoke that is visible on or over property off the premises of the fire. It is an affirmative defense to a violation of this section that the fire emitting such smoke was started within 5 minutes of the violation and the violation did not continue beyond such time.
 - ix. A running fire is not considered a landscape waste fire.
 - x. A landscape waste fire may be ignited with a minimum amount of starter fuel. No landscape waste fire may be ignited with motor fuels, plastic, or other material.
2. Landscape waste fires are declared to be the responsibility of any person owning or controlling the property on which the fire occurs, and any person setting, attending, or contributing to such fire.

(G) Permit Required for Open Burning

- 1. No person shall start or allow any open fire on any property within the City of Washington without first having obtained a City Fire Permit, except that a permit is not required for:
 - i. A recreational fire.
 - ii. A fire in an authorized container used solely for food preparation or warmth, including a charcoal, gas, propane, compressed wood pellet, or electric grill, camp stove, manufactured hibachis, or wood smoker and using the described proper fuels.
 - iii. Landscape Waste Fires conducted in accordance with Section (F) of this Ordinance.
- 2. City Fire Permits may be obtained from the Chief of Police or his or her designee. The Chief of Police or his or her designee must consult with the Chief of the Washington Volunteer Fire Department or his/her designee prior to issuing a permit. Such consultation may be in the form of generalized rules or guidance.
- 3. The City Fire Permit fee is \$10.00. The Chief of Police or his or her designee may waive the permit fee for government, nonprofit, or bona fide fraternal organizations or other good cause at the discretion of the Chief of Police or his or her designee.

4. The Chief of Police or his or her designee may include as a condition of a City Fire Permit any rules or regulations pertaining to the conduct of a permitted fire, including but not limited to times, dates, minimum or maximum wind speeds, or other conditions, a violation of which will render the permit void.
- (H) No person, firm or corporation shall burn any trash, papers, rubbish, garbage, waste or any other discarded matter or material indoors or outdoors in the city, except in an incinerator complying with all applicable laws and ordinances. Nothing in this division shall be deemed to prohibit the use of wood in stoves used for cooking, the use of wood in fireplaces for decorative fires, or the use of wood in fireplaces or stoves designed for heating.
- (I) In areas and upon properties zoned for commercial use, open burning shall not be allowed or permitted, except as may be permitted or allowed by federal or state law.
- (J) Bonfires and ceremonial fires used will be permitted only as follows:
1. Bonfires and ceremonial fires will be permitted only to the extent that the fuel sources for such fire consists of vegetative material and is not an otherwise prohibited source as determined by the Illinois Environmental Protection Agency or other state law or agency, other federal law or agency, or Tazewell County ordinance or agency.
 2. Bonfires and ceremonial fires in connection with or as a part of an organized school or community activity, event, or function, will be permitted only with the prior written approval of the Chief of the Washington Volunteer Fire Department or his or her designee.
 3. Bonfires and ceremonial fires are prohibited without a valid City Fire Permit.
 4. Bonfires and ceremonial fires shall be constantly attended by a competent person until such fire is extinguished and a method to extinguish any such fire shall be immediately available in the vicinity of the fire.

(Ord. 1600, passed 9-5-89; Am. Ord. 2041, passed 10-7-96; Am. Ord. 2286, passed 5-7-01;
Am. Ord. 2579, passed 12-6-04; Am. Ord. 3039, passed 6-3-13)
Penalty, see § 93.99

Section 2. That § 93.99 detailing Penalties be amended and the following subsection (B) inserted in said section:

§ 93.99 PENALTY

- (A) Whoever violates the provisions of this chapter, for which another penalty is not already provided, shall be fined not more than five hundred dollars (\$500.00) for each offense.

- (B) In addition to other penalties, smoke from all open burning, including recreational fires, may be considered a nuisance under Chapter 96 of this Code if it is injurious to health, offensive to the senses, if it obstructs the free use of property, or if it interferes with the comfortable enjoyment of life or property.

Section 3. Severability. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.

Section 4. That all ordinances, or parts thereof, in conflict herewith are hereby expressly repealed.

Section 5. That this ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

PASSED AND APPROVED this _____ day of _____, 2019.

AYES _____

NAYS _____

Mayor

ATTEST:

City Clerk