

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING AND REGULATING THE CONDUCT OF OPEN BURNING  
WITHIN NICOLLET COUNTY, MINNESOTA.**

**THE COUNTY BOARD OF NICOLLET COUNTY DOES ORDAIN:**

**SECTION 1. ADOPTION OF STATE LAW BY REFERENCE.**

A general burning permit may be adopted by the County Board of Commissioners in counties that are determined by the Commissioner of Natural Resources to have low potential for damage to life and property from wildfire. The provisions of Minn. Stat. ch. 88, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, permits, and all other matters pertaining to open burning are hereby adopted by reference and are made a part of this ordinance as if set out in full. It is the intention of the County Board that all future amendments of Minn. Stat. ch. 88, are hereby adopted by reference or referenced as if they had been in existence at the time this Ordinance was adopted.

**SECTION 2. COUNTY MAY BE MORE RESTRICTIVE THAN STATE LAW.**

The County Board is authorized to impose additional restrictions on open burning within the County beyond those contained in Chapter 88 of Minnesota Statutes, as it may be amended from time to time.

**SECTION 3. PURPOSE.**

The Commissioner of Natural Resources has determined that Nicollet County is not a wildfire area and otherwise has the low potential for damage to life and property from wildfire.

The purpose of this ordinance is to regulate open burning within the County of Nicollet, to protect the public health, safety and welfare. Through passage of this ordinance, the designated fire official is hereby authorized to adopt and impose burning restrictions to aid in the prevention of wildfire and to consult with the Department of Natural Resources (DNR), Division of Forestry to develop any restrictions or other criteria.

**SECTION 4. DEFINITIONS.**

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

**DESIGNATED FIRE OFFICIAL.** The Sheriff who provides public safety services to the County.

**OPEN BURNING.** "Open fire" or "open burning" means a fire burning in matter, whether concentrated or dispersed, which is not contained within a fully enclosed firebox, structure or vehicle and from which the products of combustion are emitted directly to the open atmosphere without passing through a stack, duct or chimney. (Minn. Stat. §88.01, subd. 23). Mobile cooking devices, such as charcoal grills, wood smokers, manufactured hibachis, and propane or natural gas devices, are not considered open burning.

**RECREATIONAL/CAMPFIRE.** "Campfire" means a fire set for cooking, warming, or ceremonial purposes, which is not more than three (3) feet in diameter by three (3) feet high, and has had the ground five (5) feet from the base of the fire cleared of all combustible material. (Minn. Stat. §88.01, subd. 25). The Campfire shall use dry, clean wood; produce little detectable smoke, odor or soot beyond the property line; be conducted with an adult tending the fire at all times; be for recreational, ceremonial, or social food preparation; be extinguished completely before quitting the occasion; and be respectful of weather conditions, neighbors, burning bans, and air quality requirements so that nuisance, health or safety hazards will not be created.

**RECREATIONAL/CAMPFIRE SITE.** An area of no more than a three (3) foot diameter circle (as measured from the inside of the fire ring or border) that is completely surrounded by non-combustible and non-smoke or odor producing material. The material may be either natural rock, cement, brick, tile, blocks or ferrous metal. Burning barrels are specifically not a recreational fire site as defined herein. Recreational fire sites shall not be located closer than 25 feet to any structure or combustible material.

**RUNNING FIRE.** An open fire allowed to spread through surface vegetative matter under controlled conditions for the purpose of vegetative management, forest management, game habitat management, or agricultural improvement.

**STARTER FUELS.** Defined as dry, untreated, unpainted, kindling, branches or charcoal fire starter. Paraffin candles and alcohols are permitted as starter fuels and as aids to ignition only. Propane gas torches or other clean gas burning devices causing minimal pollution may be used to start an open fire.

**VEGETATIVE MATERIALS.** Dry leaves, dry grass clippings, twigs, branches, tree limbs, untreated or unpainted wood that contains no glues or resins, and other similar materials. Paper and cardboard are not vegetative materials.

**WOOD.** The substance of trees and shrubs consisting largely of cellulose and lignin. "Wood" does not include wood that is oil soaked, or treated with paint, glue or preservatives. Clean wood pallets may be used for recreational fires when cut into less than three foot lengths.

## **SECTION 5. PROHIBITED MATERIALS.**

(A) No person shall conduct, cause or permit the open burning of prohibited materials as listed in Minn. Stat. § 88.171, subs. 1 - 8, and any future amendments thereto. These materials include but are not limited to: oils, petroleum fuels, rubber, plastic, chemically treated materials; or other materials that produce excessive or noxious smoke such as, tires; railroad ties; treated, painted or glued wood composite shingles; tar paper; insulation; composition board; sheet rock; wiring; or paint and paint filters.

(B) No person shall conduct, cause or permit the open burning of: hazardous waste or materials from salvage operations; solid waste generated from an industrial or manufactured process; materials from a service or commercial establishment; or building materials generated from demolition of structures, except as authorized in Minn. Stat. ch. 88

(C) No person shall conduct, cause or permit the open burning of discarded materials resulting from the handling, processing, storage, preparation, serving or consumption of food (i.e. garbage), unless specifically allowed under Minn. Stat. § 17.135.

## **SECTION 6. GENERAL BURNING PERMIT FOR OPEN BURNING.**

Permission for open burning is extended to all residents in the County without the need for individual written or electronic permits under this ordinance, provided burning conforms to all other provisions of this ordinance and state law. Cities may further restrict burning within the boundaries of their jurisdiction.

Open burning shall conform to the following times and conditions:

(A) TIME: Open burning may take place daily at any hour.

(B) CONDITIONS:

- (1) This general permit allows for the open burning of wood and vegetative material only, as defined in Section 4.
- (2) Open fires may not burn within 50 feet of the residence of another person without the written permission of the occupant of the other residence.
- (3) Prevailing winds must be away from neighboring occupied buildings, public roads, airports and landing strips.
- (4) Burning is prohibited below the ordinary high water mark of public waters, except for agricultural operations or for the purposes of managing forests, prairies, or wildlife habitat.

- (5) Fires must be kept under control. Owners and occupants starting or tending fires are liable for all damages and costs caused by violations of this Ordinance or state law.
- (6) Open fires shall not be started, and must be immediately extinguished at any time the Designated Fire Official determines that there is danger of fire spreading, endangering property or otherwise creating a hazard or nuisance. No person shall refuse a lawful order to extinguish a fire.
- (7) A fire may not be allowed to smolder with no flame present.
- (8) The owner or occupant of a property shall notify the Law Enforcement Dispatch office each day before starting an open fire and each subsequent day if the fire carries over from day to day.

A permit is not required for any fire which is a recreational/campfire or recreational/campfire site as defined in Section 4.

#### **SECTION 7. PERMITTED OPEN BURNING; SPECIAL CIRCUMSTANCES.**

(A) Under special or extraordinary circumstances, open burning outside of County regulations may be allowed by the County or by the Commissioner of Natural Resources or an agent of the Commissioner of Natural Resources for:

- (1) Elimination of a health hazard that cannot be abated by other practical means, as determined by the Commissioner of Health or the Board of Health.
- (2) Ground thawing for utility repair and construction.
- (3) Running fires.
- (4) Disposal of vegetative matter for managing forest, prairie or wildlife habitat, and in the development and maintenance of land and rights-of-way where chipping, composting, land-spreading or other alternative methods are not practical.
- (5) Disposal of diseased trees generated on-site, diseased or infected nursery stock, or diseased bee hives.
- (6) Disposal of unpainted, untreated, non-glued lumber and wood shakes generated from construction, where recycling, reuse, removal or other alternative disposal methods are not practical.

(B) Permits to a fire department allowing burning of a structure for fire training may only be issued by the Commissioner of Natural Resources or an agent of the Commissioner of Natural Resources. (Minn. Stat. § 88.17, subd. 3(a)).

(C) Permits for the operation of a permanent tree and brush open burning sites may only be issued by the Commissioner of Natural Resources or an agent of the Commissioner of Natural Resources. (Minn. Stat. § 88.17, subd. 3(b)).

#### **SECTION 8. RESPONSIBILITY.**

(A) Prior to starting an open burn, the person is responsible for confirming that no burning ban or burning restrictions are in place.

(B) The open burning site shall have communication and fire suppression equipment available.

(C) The open burn shall be attended to at all times by the person responsible for the fire, or a competent representative. The fire shall be completely extinguished before the person or his or her representative leaves the site.

(D) The person responsible for the fire is accountable for compliance and implementation of all general conditions, special conditions, and guidelines as established in this Ordinance or state statute. The person responsible for the fire shall be liable for all costs incurred as a result of the fire, including but not limited to fire suppression costs, damages, and administrative fees.

#### **SECTION 9. REVOCATION OF GENERAL BURNING PERMIT.**

The general burning permit for open burning as provided for in Section 6 is subject to revocation at the discretion of a designated county fire official, a licensed peace officer, conservation officer or a DNR forest officer. Reasons for revocation include but are not limited to: a fire hazard existing or developing during the course of the burn; any permit conditions being violated during the course of the burn; pollution or nuisance conditions developing during the course of the burn; or a fire smoldering with no flame; or no attendant present.

#### **SECTION 10. BURNING BAN OR AIR QUALITY ALERT.**

(A) The Commissioner of Natural Resources and the designated fire official are authorized to determine when conditions make open burning potentially hazardous and declare a burning ban within the County.

(B) No recreational fire or open burning will be permitted when the County has officially declared to be under a burning ban due to potential hazardous fire conditions or when the MPCA has declared an air quality alert.

**SECTION 11. PENALTY.**

Any person convicted of violating any provision of this ordinance is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000.00), imprisonment for not more than ninety (90) days, or both, plus the costs of prosecution.

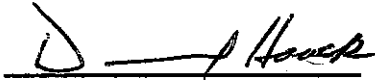
**SECTION 12. SEVERABILITY.**

If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

**SECTION 13. EFFECTIVE DATE.**

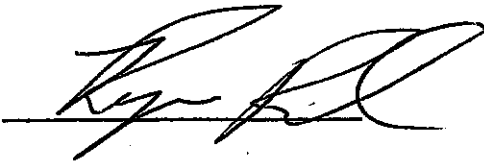
This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance. At any time when the Commissioner of Natural Resources or the County Board determines that a general burning permit is no longer in the public interest, the general permit may be canceled by the Commissioner of Natural Resources or the County Board.

Passed by the Nicollet County Board this 14<sup>th</sup> day of May, 2013.

  
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**Board Chair**

**Attested:**

  
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**County Administrator**