

ORDINANCE NO. 589

AN ORDINANCE PROHIBITING OPEN BURNING WITHIN THE CORPORATE LIMITS OF THE CITY OF WATHENA, KANSAS; PROVIDING FOR PENALTIES FOR VIOLATIONS THEREOF; AND REPEALING ORDINANCE NO. 534 AND ALL OTHER ORDINANCES AND PARTS OF ORDINANCES OF THE CITY OF WATHENA IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WATHENA, KANSAS:

SECTION 1. DESIGNATION OF ORDINANCE. This ordinance shall be referred to as the Open Burning Ordinance.

SECTION 2. DEFINITIONS. For the purpose of this ordinance, the following words and terms shall have the following meanings:

- (A) "Burn Permit" shall mean a written permit designed to license, specify and document open burning as provided in this ordinance. Such permit is subject to the approval of the Governing Body, and may be reviewed and amended at any time by the Governing Body. Such permit shall be made available for public examination at the City Hall during normal business hours.
- (B) "Burn Permit Officer" shall mean the City Clerk. The Mayor may also appoint a person to serve as a Burn Permit Officer in the event that the aforementioned Burn Permit Officer fails or is unable to serve.
- (C) "Burn Permit Policy" shall mean a written policy which sets forth the conditions for the issuance of a Burn Permit. Such policy is subject to the approval of the Governing Body, and may be reviewed and amended at any time by the Governing Body. Such policy shall be made available for public examination at the City Hall during normal business hours.
- (D) "Fire Department" means Rural Fire District Number 1 Chief, Assistant Chief or their designee.
- (E) "Open Burning" shall mean any burning that takes place outside a residential or business structure or any accessory structure thereto and shall not include charcoal, briquettes, and similar materials utilized during the course of outdoor grilling or cooking.

- (F) “Person” means an individual, public or private corporation, government, church, school, partnership, or unincorporated association.

SECTION 3. SCOPE OF ORDINANCE. This ordinance is created to regulate the burning of garbage, trash, leaves, brush, lumber, petroleum products, oils, tires, composition shingles, tar paper, chemicals, hazardous materials, and all similar items.

- (A) Any burning that takes place within a residential or business structure or any accessory structure thereto that is fueled by wood, coal, or gas and is related to heating, cooking, or other lawful private or commercial pursuits is beyond the scope of this ordinance, except that any such burning that creates a nuisance or a hazard is declared unlawful and is subject to the fines established herein.
- (B) Nothing in this ordinance shall be construed to abrogate or impair the powers of the Courts or of any department of the City of Wathena to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this ordinance shall be in addition to and supplemental to the powers conferred by the Constitution, any other law or ordinance. Nothing in this ordinance shall be construed to impair or limit in any way the power of the City of Wathena to define and declare nuisances and to cause their removal or abatement by summary proceeding or otherwise.

SECTION 4. OPEN BURNING PROHIBITED WITHOUT PERMIT. (a) Open Burning is hereby prohibited within the corporate limits of the City of Wathena, unless the individual conducting the Open Burning obtains a Burn Permit from a Burn Permit Officer prior to the commencement of Open Burning. An individual seeking a Burn Permit may contact a Burn Permit Officer during normal business hours through the City Clerk or as posted at City Hall.

(b) There shall be no Open Burning within the scope of the Open Burning Ordinance without a valid Burn Permit.

(c) It shall be prima facie evidence that the person who owns or controls property on which Open Burning occurs has caused or permitted the Open Burn.

(d) The individual conducting the Open Burning shall stockpile the material to be burned, dry it to the extent possible before it is burned, and assure that it is free of matter that will inhibit good combustion.

(e) The burning of heavy smoke-producing materials, including but not limited to petroleum products, oils, tires, composition shingles, and tar paper is prohibited, including their use to ignite or accelerate an otherwise legal Open Burn.

(f) No Open Burning is permitted during periods when surface wind speed is less than five (5) miles per hour or more than fifteen (15) miles per hour.

(g) The person conducting the Open Burn shall insure that the burning is supervised at all times, until the fire is extinguished.

(h) No Open Burning is permitted which creates a nuisance. No Open Burning is permitted which creates a traffic or other safety hazard.

(i) A person shall conduct an Open Burning operation under such additional conditions as the Burn Permit Officer may deem necessary to prevent emissions which:

- (i) may be injurious to human health, animal or plant life, or property, or
- (ii) may unreasonably interfere with the enjoyment of life or property, or otherwise cause a nuisance.

(j) There shall be no Open Burning except between the hours commencing at 7:00 A.M. and ending at 7:00 P.M. All fires shall be extinguished at all other times.

(k) There shall be no Open Burning on Sunday or any legal holiday.

(l) There shall be no Open Burning at any time the Governing Body of the City of Wathena shall, by Resolution, determine that weather conditions or local circumstances make fireplaces hazardous.

(m) There shall be no Open Burning within twenty (20) feet of any building.

(n) All persons Open Burning in accordance with this Ordinance must comply with all applicable State and Federal laws.

SECTION 5. BURN PERMIT OFFICER; POWERS & DUTIES. A Burn Permit Officer is hereby authorized to exercise such powers and duties as may be necessary to carry out the purposes of this ordinance, including the following:

- (A) To review and revise the Burn Permit Policy at the direction of the Governing Body, and to advise the Governing Body in regard to this ordinance.

- (B) At his or her discretion, to inspect any premises for which a Burn Permit is sought prior to the issuance of a Burn Permit.
- (C) Issue or refuse to issue Burn Permits in accordance with the Burn Permit Policy, taking into account any case-specific factors not expressly stated in the Burn Permit Policy which involve the issues of nuisance and/or hazard.
- (D) Keep appropriate records of Burn Permit applications and Burn Permits issued.
- (E) Have authority to enter upon a premises for which a Burn Permit is sought or has been obtained for the purpose of inspecting an open burning or for any other purposes related to this ordinance. Denial of such entry is a violation of this ordinance.
- (F) Cause the extinguishment of any open burning being conducted without a Burn Permit, or in violation of a Burn Permit, the Burn Permit Policy, and/or this ordinance, or otherwise to bring violators of this ordinance into compliance.
- (G) To give testimony in Court regarding violations charged under this ordinance.

SECTION 6. DUTY OF OWNER. Whenever a property owner becomes aware of any Open Burning being conducted without a Burn Permit, or of any violation of a Burn Permit, the Burn Permit Policy, and/or this ordinance on his or her property, regardless of how or by whom such unpermitted Open Burning or other such violation originated, it shall be the duty and obligation of such property owner to immediately cause the cessation of such unpermitted Open Burning or other violation. Failure to do so is a violation of this ordinance by any and all such property owners.

SECTION 7. BURNING OF GARBAGE AND TRASH UNLAWFUL. It shall be unlawful and a misdemeanor for any person to burn any garbage or trash out of doors within the corporate limits of the City of Wathena, Kansas.

SECTION 8. PENALTIES. Any person who shall violate any of the provisions of Sections 4, 6 and 7 of this Ordinance shall, upon conviction, be punished by a fine of not more than Five Hundred Dollars (\$500.00) or be sentenced to a term of confinement of not to exceed thirty (30) days or by both such fine and imprisonment or any combination thereof.

SECTION 9. INTERPRETATION. In their interpretation and application, the provisions of this Ordinance shall be liberally construed in favor of the City of Wathena, the Burn Permit Officer, the Burn Permit Policy, and the Governing Body.

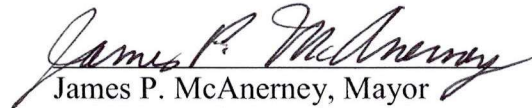
SECTION 10. WARNING AND DISCLAIMER OF LIABILITY. The degree of public protection required by this ordinance is considered reasonable for regulatory purposes. This ordinance shall not create a liability on the part of the City of Wathena, any officer, employee, or body thereof, for any damages that may result from reliance on this ordinance or any administrative decision lawfully made thereunder.

SECTION 11. SEVERABILITY. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this ordinance shall not be affected thereby.

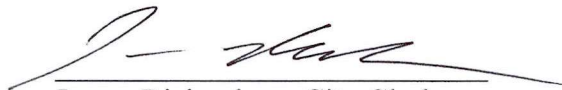
SECTION 12. REPEALER. Ordinance No. 534 and all other ordinances and parts of ordinances of the City of Wathena, Kansas, in conflict herewith are hereby repealed.

SECTION 13. EFFECTIVE DATE. This ordinance shall take effect and be in full force on January 1, 2008, and after its publication in The Kansas Chief, Official City Newspaper.

PASSED by the Council and APPROVED by the Mayor this 3rd day of December, 2007.


James P. McAnerney, Mayor

ATTEST:


James Richardson, City Clerk