

VLCT MODEL ORDINANCE

ORDINANCE REGULATING OPEN BURNING AND INCINERATION

SECTION 1. Authority

This ordinance is enacted pursuant to the authority granted to the [Town, Village, City] to promote the public health, safety and welfare by 24 V.S.A. § 2291 and the power to establish and administer a local air pollution control ordinance by 10 V.S.A. § 564. This ordinance shall be a civil ordinance within the meaning of 24 V.S.A. Chapter 59.

SECTION 2. Purpose.

It is the purpose of this ordinance to regulate the disposal of solid waste through the open burning and incineration of waste in the [Town, Village, City] of _____ in order to protect the public health, safety, and welfare, and to promote the responsible use of resources and protection of the environment. The disposal of solid waste through the open burning and incineration of waste is deemed to be a public nuisance.

SECTION 3. Definitions.

- a. "Enforcement Officer" means the municipal fire warden and any [*deputy fire warden, constable, police officer, administrative officer, health officer, selectboard member, etc.*] appointed by the [*Selectboard, Board of Trustees, City Council*] to enforce the provisions of this ordinance.
- b. "Hazardous waste" shall mean any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form, including those which are toxic, corrosive, ignitable, reactive, strong sensitizers, or which generate pressure through decomposition, heat, or other means, which in the judgment of the Secretary may cause, or contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, taking into account the toxicity of such waste, its persistence and degradability in nature, and its potential for assimilation, or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms, or any matter which may have an unusually destructive effect on water quality if discharged to ground or surface waters of the State. All special nuclear, source, or by-product material, as defined by the Atomic Energy Act of 1954 and amendments thereto, codified in 42 U.S.C. § 2014, is specifically excluded from this definition.
- c. "Incineration" means the burning of solid waste in an enclosed container, such as a furnace, stove, incinerator or similar device.
- d. "Natural wood" means trees, including logs, boles, trunks, branches, limbs, and stumps, lumber including timber, logs or slabs, especially when dressed for use. This definition shall also include pallets which are used for the shipment of various materials so long as such pallets are not chemically treated with any preservative, paint, or oil. This definition shall not extend to other wood products such as sawdust, plywood, particle board and press board.

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- e. “Open burning” means the burning of any type of combustible material in the open where the products of combustion are emitted directly into the ambient air space without passing through a stack, chimney, or other enclosure. Burning shall include ignition, permitting or causing ignition and suffering, allowing or maintaining burning.
- f. “Secretary” means the Secretary of the Vermont Agency of Natural Resources.
- g. “Solid waste” means any discarded garbage, refuse, septage, sludge from a waste treatment plant, water supply plant, or pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, or agricultural operation and from community activities but does not include animal manure and absorbent bedding used for soil enrichment; high carbon bulking agents used in composting; or solid or dissolved materials in industrial discharges which are point sources subject to permits under the Water Pollution Control Act, chapter 47 of title 10. For the purpose of this ordinance, solid waste shall also include marketable recyclables.
- h. “Waste” means a material that is discarded or is being accumulated, stored, or physically, chemically, or biologically treated prior to being discarded or has served its original intended use and is normally discarded.

SECTION 4. Requirements.

- a. Unless a permit is obtained pursuant to this ordinance, the disposal of solid waste through open burning or incineration is prohibited in the [Town, Village, City] of _____ unless the practice has been approved by the Vermont Department of Environmental Conservation.
- b. Nothing herein shall prevent the use of: campfires, barbeque pits or bonfires less than [*insert size (if desired) such as “less than thirty”*] inches in diameter; the burning of natural wood or virgin fuel for the purpose of preparing food; the recreational burning of natural wood outdoor fireplace and chimineas or other similar containers; or the burning of natural wood or non-woody vegetation, including bonfires greater than [*insert size (if desired) such as “less than thirty”*] inches in diameter, when the ground surrounding the area where the burning is to take place is covered with snow.
- c. To the extent allowed by the Vermont Air Pollution Control Regulations, a Permit to Kindle Fire may be granted by the municipal fire warden for the following types of open burning, provided no public nuisance is created:
 - 1. The open burning of natural wood fires in conjunction with holiday and festive celebrations, campfires, and fireplaces that do not meet the criteria found in Section 4, subsection (a) of this ordinance.
 - 2. The open burning of leaves, brush, weeds, grass, natural wood waste resulting from property maintenance, logging operations and clearing operations, and similar materials for agricultural improvement, forest or wildlife habitat management.

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3. After providing the required notice to the Air Quality and Climate Division of the Department of Environmental Conservation, the burning of solid or liquid fuels, or structures for bona fide fire training provided that materials other than natural wood are removed to the greatest extent possible prior to the training.
 3. With the prior written approval in the form of a permit from the Air Quality and Climate Division of the Department of Environmental Conservation, the open burning of natural wood demolition or construction materials and natural wood commercial wastes such as pallets or skids.
 4. With the prior approval of the Department of Environmental Conservation, burning authorized by the [*Selectboard, Trustees, Council*] of _____ for the protection of public health or to thwart a hazard.
 5. The open burning of natural wood and non-woody vegetation at a designated place within the municipality, as authorized by the [*Selectboard, Trustees, Council*] of _____ in accordance with 10 V.S.A. § 565.
- d. To obtain a Permit to Kindle Fire, the applicant shall establish that no hazardous or nuisance situations will be created by open burning at the time the permit is issued, and that the application is for open burning that is permitted under this ordinance. Permits to Kindle Fire must provide for the specific date, time and location of the burning and indicate the specific materials that the permittee is authorized to burn. Failure to meet the conditions of the Permit to Kindle Fire, once it has been issued, will render the permit invalid and subject the permittee to enforcement pursuant to this ordinance.
 - e. Individuals possessing a Permit to Kindle Fire shall attend the fire until extinguished and shall have sufficient means readily available to them to keep the burn under control and to extinguish the burn immediately. The municipal fire warden can enter the property of the permit holder to investigate a fire and order the fire be extinguished. If the permit holder refuses to extinguish, the municipal fire warden may call the fire department to extinguish the fire. Any cost associated with the fire department extinguishing the fire is the responsibility of the permit holder.
 - f. The provisions of this ordinance shall not apply to the burning of natural wood or any virgin fuel in a furnace, fireplace or stove to produce heat.

SECTION 5. Enforcement and Penalties.

- a. A violation of this ordinance shall be a civil matter which may be enforced in the Vermont Judicial Bureau or in the Superior Court, at the election of the [*Selectboard, Trustees, Council*]. Each day that the violation continues shall constitute a separate violation of this ordinance.

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1. Violations enforced in the Judicial Bureau shall be in accordance with the provisions of 24 V.S.A. §§ 1974a and 1977 et seq. A civil penalty of not more than [insert amount of up to \$800] per violation may be imposed for violation of this ordinance.

A. A municipal ticket will be issued by the Enforcement Officer if the violation has not been corrected in accordance with this ordinance.

B. For purposes of enforcement in the Judicial Bureau, the designated Enforcement Officer shall issue tickets and may be the appearing officer at any hearing.

2. Violations enforced in the Superior Court shall be in accordance with the Vermont Rules of Civil Procedure. The Enforcement Officer or [Selectboard, Trustee, Council] may pursue all appropriate injunctive relief. In addition, a civil penalty of not more than [insert amount of up to \$800] per violation may be imposed for violation of this ordinance. A civil action may be initiated by the Enforcement Officer if the violation has not been corrected in accordance with this ordinance.

b. Waiver fee from municipal complaint: An issuing municipal official is authorized to recover civil penalties in the following amounts, or as established by the Judicial Bureau, for each violation of this ordinance:

1st offense	\$50.00
2nd offense	\$100.00
3rd offense	\$150.00
4th offense	\$200.00
5th & subsequent offenses	\$300.00

SECTION 6. Severability.

If any section of this ordinance is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this ordinance. If any statute referred to in this ordinance shall be amended, this ordinance shall be deemed to refer to such amended statute.

SECTION 7. Effective date.

This ordinance shall become effective sixty (60) days after its adoption by the [Selectboard, Trustees, Council], or at such time following the expiration of the 60 days from the date of its adoption as is determined by the [Selectboard, Trustees, Council] per 24 V.S.A. § 1973. If a petition is filed under 24 V.S.A. § 1973, that statute shall govern the taking effect of this ordinance.

Adopted this _____ day of _____, 20__ by the [Selectboard, Trustees, Council] of the Town of _____ Selectboard.

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ADOPTION HISTORY: (*discretionary section*)

1. Agenda item at regular meeting of the [*Selectboard, Trustees, Council*] held on _____.
2. Read and approved at regular meeting of the [*Selectboard, Trustees, Council*] on _____ and entered in the minutes of that meeting which were approved on _____.
3. Posted in public places on _____.
4. Notice of adoption published in the _____ newspaper on _____ with a notice of the right to petition.
5. [Other actions such as petitions, etc.]:

VLCT Model Ordinance July 28, 2014