

ORDINANCE REGULATING OPEN BURNING AND INCINERATION

SECTION 1 – Authority

This ordinance is enacted pursuant to the authority granted to the Town of Hinesburg 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 of Hinesburg 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 one of the following: the fire ward, health officer, fire chief, or an officer with the Hinesburg Community Police Department. The officers listed may 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, 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.

43 e. “Open burning” means the burning of any type of combustible material in the open where the
44 products of combustion are emitted directly into the ambient air space without passing through a
45 stack, chimney, or other enclosure. Burning shall include ignition, permitting or causing ignition
46 and suffering, allowing or maintaining burning.

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48 f. “Permit” means a Permit to Kindle Fire, allowing burning as specified in this ordinance.

49
50 g. “Secretary” means the Secretary of the Vermont Agency of Natural Resources.

51
52 h. “Solid waste” means any discarded garbage, refuse, septage, sludge from a wastewater
53 treatment plant, water supply plant, or pollution control facility and other discarded material,
54 including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial,
55 commercial, mining, or agricultural operation and from community activities but does not
56 include animal manure and absorbent bedding used for soil enrichment; high carbon bulking
57 agents used in composting; or solid or dissolved materials in industrial discharges which are
58 point sources subject to permits under the Water Pollution Control Act, chapter 47 of title 10. For
59 the purpose of this ordinance, solid waste shall also include marketable recyclables.

60
61 i. “Waste” means a material that is discarded or is being accumulated, stored, or physically,
62 chemically, or biologically treated prior to being discarded or has served its original intended use
63 and is normally discarded.

64
65 **SECTION 4 – Requirements**

66 a. Unless a permit is obtained pursuant to this ordinance, the disposal of solid waste through
67 open burning or incineration is prohibited in the Town of Hinesburg unless the practice has been
68 approved by the Vermont Department of Environmental Conservation.

69
70 b. Nothing herein shall prevent the use of: campfires, barbeque pits or bonfires; the burning of
71 natural wood or virgin fuel for the purpose of preparing food; the recreational burning of natural
72 wood outdoor fireplace and chimineas or other similar containers; or the burning of natural wood
73 or non-woody vegetation, including bonfires, when the ground surrounding the area where the
74 burning is to take place is covered with snow.

75
76 c. To the extent allowed by the Vermont Air Pollution Control Regulations, a permit may be
77 granted by the Town for the following types of open burning, provided no public nuisance is
78 created:

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80 1. The open burning of natural wood fires in conjunction with holiday and festive
81 celebrations, campfires, and fireplaces that do not meet the criteria found in Section 4,
82 subsection (a) of this ordinance.

83 2. The open burning of leaves, brush, weeds, grass, natural wood waste resulting from
84 property maintenance, logging operations and clearing operations, and similar materials
85 for agricultural improvement, forest or wildlife habitat management.

86

87 3. After providing the required notice to the Air Quality and Climate Division of the
88 Department of Environmental Conservation, the burning of solid or liquid fuels or
89 structures for fire training provided that materials other than natural wood are removed to
90 the greatest extent possible prior to the training.

91 4. With the prior written approval in the form of a permit from the Air Quality and
92 Climate Division of the Department of Environmental Conservation, the open burning of
93 natural wood demolition or construction materials and natural wood commercial wastes
94 such as pallets or skids.

95 5. With the prior approval of the Department of Environmental Conservation, burning
96 authorized by the Town of Hinesburg for the protection of public health or to thwart a
97 hazard.

98 6. The open burning of natural wood and non-woody vegetation at a designated place
99 within the municipality, as authorized by the Town of Hinesburg in accordance with 10
100 V.S.A. § 565.

101
102 d. To obtain a permit, the applicant shall establish that no hazardous or nuisance situations will
103 be created by open burning at the time the permit is issued, and that the application is for open
104 burning that is permitted under this ordinance. Permits must provide for the specific date, time
105 and location of the burning and indicate the specific materials that the permittee is authorized to
106 burn. Failure to meet the conditions of the permit, once it has been issued, will render the permit
107 invalid and subject the permittee to enforcement pursuant to this ordinance.

108
109 e. Individuals possessing a permit shall attend the fire until extinguished and shall have sufficient
110 means readily available to them to keep the burn under control and to extinguish the burn
111 immediately. The municipal fire warden can enter the property of the permit holder to investigate
112 a fire and order the fire be extinguished. If the permit holder refuses to extinguish, the municipal
113 fire warden may call the fire department to extinguish the fire. Any cost associated with the fire
114 department extinguishing the fire is the responsibility of the permit holder.

115
116 f. The provisions of this ordinance shall not apply to the burning of natural wood or any virgin
117 fuel in a furnace, fireplace or stove to produce heat.

118
119 **SECTION 5 – Enforcement and Penalties**

120 a. A violation of this ordinance shall be a civil matter which may be enforced in the Vermont
121 Judicial Bureau or in the Superior Court, at the election of the Town of Hinesburg. Each day that
122 the violation continues shall constitute a separate violation of this ordinance.

123
124 1. Violations enforced in the Judicial Bureau shall be in accordance with the provisions of 24
125 V.S.A. §§ 1974a and 1977 et seq. A civil penalty of not more than \$800 per violation may be
126 imposed for violation of this ordinance.

127
128 A. A municipal ticket will be issued by the Enforcement Officer if the violation has not
129 been corrected in accordance with this ordinance.

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

132 2. Violations enforced in the Superior Court shall be in accordance with the Vermont Rules
133 of Civil Procedure. An Enforcement Officer or Town of Hinesburg may pursue all
134 appropriate injunctive relief. In addition, a civil penalty of not more than \$800 per violation
135 may be imposed for violation of this ordinance. A civil action may be initiated by an
136 Enforcement Officer if the violation has not been corrected in accordance with this
137 ordinance.

138
139 b. Waiver fee from municipal complaint: Civil penalties in the following amounts, or as
140 established by the Judicial Bureau, may be recovered by the Town of Hinesburg for each
141 violation of this ordinance:

- 142 1st offense \$50.00
- 143 2nd offense \$400.00
- 144 3rd and subsequent offense \$800.00

145
146 **SECTION 6 – Severability**
147 If any section of this ordinance is held by a court of competent jurisdiction to be invalid, such
148 finding shall not invalidate any other part of this ordinance. If any statute referred to in this
149 ordinance shall be amended, this ordinance shall be deemed to refer to such amended statute.

150
151 **SECTION 7 – Effective date**
152 This ordinance shall become effective sixty (60) days after its adoption by the Selectboard of the
153 Town of Hinesburg, or at such time following the expiration of the 60 days from the date of its
154 adoption as is determined by the Selectboard per 24 V.S.A. § 1973. If a petition is filed under 24
155 V.S.A. § 1973, that statute shall govern the taking effect of this ordinance.

156
157 **Adopted this _____ day of _____, 2015 by the Selectboard of the Town of**
158 **Hinesburg.**

159
160
161 _____
162 Michael Bissonette, Chair Phil Pouech, Vice-Chair

163
164
165 _____
166 Andrea Morgante Jonathan Trefry

167
168
169 _____
170 Tom Ayer

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172
173 **ADOPTION HISTORY: (discretionary section)**
174 1. Agenda item at regular meeting of the [*Selectboard, Trustees, Council*] held on _____.
175 2. Read and approved at regular meeting of the [*Selectboard, Trustees, Council*] on _____
176 and entered in the minutes of that meeting which were approved on _____.
177 3. Posted in public places on _____.

Proposed Open Burning Ordinance – based on VLCT Model, amended per the Selectboard’s 05/18/15 discussion.

- 178 4. Notice of adoption published in the _____ newspaper on _____ with a notice
- 179 of the right to petition.
- 180 5. [Other actions such as petitions, etc.]:
- 181 *VLCT Model Ordinance July 28, 2014*