

ORDINANCE #16-3
Amended June 15, 2020
TOWN OF DUNN
AN ORDINANCE TO REPEAL AND RECREATE WITH AMENDMENTS, CHAPTER 16-3
OF THE GENERAL CODE OF ORDINANCES
TO REGULATE BURNING WITHIN THE TOWN OF DUNN

The Town Board of the Town of Dunn, Dane County, Wisconsin does ordain that Chapter 16-3 of the General Code of Ordinances entitled "An Ordinance Providing for the Regulation of Burning within the Town of Dunn, Dane County, Wisconsin" be and the same is hereby created to read as follows:

Section 1: Title/Purpose

This ordinance is entitled "An Ordinance Providing for the Regulation of Burning." It is the purpose of this ordinance to regulate and address the nuisance created by the burning of combustible materials in the town, because of air and water pollution that results from such burning, and because of the danger of fires where they are not properly controlled.

In addition to regulating open burning it is recognized that the use of outdoor furnaces could also create a nuisance and health hazard. Although outdoor furnaces may provide an economical alternative to conventional heating systems, concerns have been raised regarding the safety and environmental impacts of these heating devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions. This ordinance is intended to ensure that outdoor furnaces are utilized in a manner that does not create a nuisance and is not detrimental to the health, safety and general welfare of the residents of the Town.

Section 2: Authority

The Town Board of the Town of Dunn has the specific statutory authority, powers and duties, pursuant to Sec. 66.052, (1991-1992) Wis. Stats., and Chapters 143, 144, 146 and 823, (1991-1992) Wis. Stats., pursuant to the specific statutory sections noted in this ordinance and/or by its adoption of village powers under Sec. 60.10, (1991-1992) Wis. Stats., to regulate, control, prevent and enforce against in the Town of Dunn certain uses, activities, businesses and operations by persons that may cause a public nuisance in the Town of Dunn.

Section 3: Adoption of the Ordinance

The Town Board of the Town of Dunn has, by adoption of this ordinance, confirmed the specific statutory authority, powers and duties noted in the specific sections of this ordinance and has established by these sections and this ordinance, regulations, controls and enforcement against certain uses, activities, businesses and operations by person that may cause a public nuisance in the Town of Dunn.

Section 4: Coverage

- (A) Open Burning Prohibited. No person shall set or cause to be set any outdoor fire within the Town of Dunn except as exempt in Section 5 or regulated in Section 6 of this Ordinance;
- (B) Outdoor Furnace. As used in this chapter, an Outdoor Furnace is any equipment, device or apparatus, or any part thereof, which is installed, affixed or situated outdoors for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat for any interior space. An outdoor furnace may be installed, operated and used in the Town of Dunn only in accordance with the following provisions:
 - (1) The outdoor furnace shall not be used to burn any of the prohibited materials listed in Section 6 of this ordinance.
 - (2) The outdoor furnace shall be located at least 100 feet from the nearest building which is not on the same property as the outdoor furnace and must not have more than one residence which is not on the same property as the outdoor furnace within 300 feet from the outdoor furnace unless exempt under **Section IV(B)(6)(iii)** of this Ordinance.
 - (3) The outdoor furnace shall have a chimney that extends at least fifteen (15) feet above the ground surface or a greater height to be sufficient to prevent the emission from the chimney from creating a nuisance. Such greater height may be set to exceed the height of neighboring residences.
 - (4) The owner of the property must provide proof that any outdoor furnace complies with the applicable state and federal emission standards and is rated to pass the current EPA Phase II Emissions standard.
 - (5) The outdoor furnace shall be installed, operated, and used in accordance with the manufacturer's guidelines except as otherwise provided in this ordinance.
 - (6) The lawful use of an outdoor furnace installed prior to the effective date of this ordinance may be continued as long as:
 - (i) An annual license is obtained within 90 days of the adoption of this ordinance.
 - (ii) The outdoor furnace is not hazardous, harmful, noxious, or a public nuisance.
 - (iii) The Town Board may grant an exception to the setback requirement in

Section 4(B)(2), the chimney height requirements in Section 4(B)(3), and the emissions standard in Section 4(B)(4) of this ordinance if the outdoor furnace was installed prior to the adoption of this Ordinance, and licensed within 90 days of the adoption of this ordinance and complies with the remainder of Section 4(B) of this Ordinance.

- (7) Outdoor furnace license.
- (i) All outdoor furnaces operating in the Town require an annual license. The Town shall issue a license under this section for outdoor furnaces that comply with the provisions of Section 4 of this Ordinance. The owner of the outdoor furnace shall also obtain any required zoning and building permits from the county and the Town.
 - (ii) Application. An application for an outdoor furnace permit shall be made to the Town and shall include the following information:
 - (a) Name and address of applicant and property owner;
 - (b) Legal description of the property; and
 - (c) A diagram of the dimensions of the property, including location of buildings and the outdoor furnace relative to the lot lines and distances from residences on adjacent properties showing that the furnace complies with the applicable set back requirements.
 - (d) Manufacturer specifications, EPA hang-tag, or documentation that prove the outdoor furnace complies with state and federal emissions standards and meets the EPA Phase II Emissions standard.
 - (iii) Fee. All permits applied for under this section shall include an application fee that shall be determined from time to time by the Town Board.

Section 5: Exemptions

The following are exempt from the prohibition in Section 4(A):

- (A) Persons who burn charcoal or other combustible materials for domestic cooking outdoors in a grill or similar cooking equipment and subject to Section 6 (F) and (G). This exemption does not apply upon a declared public fire emergency by the State Department of Natural Resources;
- (B) Attended fires for the controlled burning of grass or similar vegetation, including brush for environmental management purposes subject to Section 6 (C),(D),(F), and (G);
- (C) Attended burning of brush or weeds on agricultural lands and burning of combustible

material related to agricultural use subject to Section 6 (A),(C),(D),(E),(F) and (G);

- (D) Attended campfires or bonfires if they are in an area cleared of flammable material, with the fire area less than three feet in diameter or one square yard, and subject to Section 6 (A),(D),(E),(F), and (G); and
- (E) Attended fires in burn barrels or fire pits with protective screens designed to prevent flying sparks or ashes, and subject to the regulation in Section 6 (A),(B),(D),(E),(F) and (G).

Section 6: Regulations

The following regulations apply to Section 5 only as noted above.

- (A) Burning in a burn barrel or fire pit or platform must be done at least fifteen (15) within a property line excluding road right of way, and burning shall be done at least thirty (30) feet away from any building, fence, structure or other combustible material;
- (B) Burning shall be permitted only on even-numbered days and between one hour before sunrise and one hour after sunset or 7:00 PM which ever is later;
- (C) Persons must notify the fire department of their jurisdiction of any burning outside of a container such as a burn barrel, fire pit or platform;
- (D) Burning shall be done only when wind velocity does not exceed fifteen (15) miles per hour as recorded by the U.S. Weather Service, Madison, Wis. (With the exception of registered prairie fires); and when wind direction is such as will not carry smoke or soot into any adjoining building or to laundry hanging outside of the premises, and when it would not be a source of annoyance by reason of smoke, fumes or odors to persons or property on or near the premises;
- (E) The burning of garbage or any other trash or materials not readily combustible is prohibited as required by Wisconsin Administrative Code NR 429.04);
- (F) No person shall fail to take action reasonably necessary to control any fire which he or she has set anywhere in the Town; and
- (G) No such fire shall be allowed to smolder for such a time as to become a nuisance.
- (H) Materials that may not be burned
 - (1) Unless a specific written approval has been obtained from the Department of Natural Resources, the following materials may not be burned in an open fire, incinerator, burn barrel, furnace, stove or any other indoor or outdoor incineration or heating

device. The Town of Dunn will not issue a permit for burning any of the following materials without air pollution control devices and a written copy of an approval by the Department of Natural Resources.

- (i) Rubbish or garbage including but not limited to food wastes, food wraps, packaging, animal carcasses, paint or painted materials, furniture, composite shingles, construction or demolition debris or other household or business wastes.
- (ii) Waste oil or other oily wastes except used oil burned in a heating device for energy recovery subject to the restrictions in Chapter NR 590, Wisconsin Administrative Code.
- (iii) Asphalt and products containing asphalt.
- (iv) Treated or painted wood including but not limited to plywood, composite wood products or other wood products that are painted, varnished or treated with preservatives.
- (v) Any plastic material including but not limited to nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, films and containers.
- (vi) Rubber including tires and synthetic rubber-like products.
- (vii) Newspaper, corrugated cardboard, container board, office paper and other materials that must be recycled.
- (viii) Materials transported into the Town for the purpose of disposal.

Section 7: Penalties

Any person violating any of the provisions of this ordinance shall be punished by a forfeiture of not less than \$20 nor more than \$500, together with the costs of prosecution, for each such offense.

Section 8: Severability

If any section or part of this Ordinance is adjudged to be unconstitutional, unlawful, or invalid, by a course of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby. The provisions of this ordinance are severable and the invalidity of any section or part thereof shall not render the entire ordinance invalid.

Section 9: Effective Date

This Ordinance shall take effect the day after passage and posting or publication pursuant to law. The above and foregoing Ordinance was adopted by the Town Board of the Town of Dunn, Dane county, Wisconsin, at its meeting held on June 15th, 2020.

TOWN OF DUNN, DANE COUNTY, WI

By: _____

Edmond P. Minihan, Town Chair

Attest: _____

Cathy Hasslinger, Town Clerk Treasurer

Approved:

Posted: