

PLEASE SUBSTITUTE FOR ordinance 48-10  
PLACED ON 1ST READING \* REFERRED TO  
THE PUBLIC SAFETY COMMITTEE 6/21/10,  
2ND READING 7/6/10, deferred 7/19/10.

ORDINANCE NO.: 48-10

BY: Antonio, Bullock, Butler,  
Madigan, Powers, Smith, Summers.

AN ORDINANCE to enact new Chapter 1503, Outdoor Burning, within Part Fifteen, Fire Prevention Code, of the Codified Ordinances of the City of Lakewood for the purpose of regulating burning within the City of Lakewood.

WHEREAS, the proposed new Chapter 1503, Outdoor Burning, clarifies current regulations within the Ohio Fire Code regarding the use of outdoor fire appliances and open burning and provides options for stricter enforcement for repeat offenders; and

WHEREAS, because of the density of the City of Lakewood, the use of these fire appliances can pose a hazard to structures within the community, as well as pose a nuisance to the neighborhood; and

WHEREAS, complaints in the City regarding the use of fire appliances and requests for information regarding outdoor burning regulations have increased; and

WHEREAS, Article 18, Section 3 of the Constitution of the State of Ohio permits municipalities to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws; now, therefore,

BE IT ORDAINED BY THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. That new Chapter 1503, Outdoor Burning, within Part Fifteen, Fire Prevention Code, of the Codified Ordinances of the City of Lakewood, be enacted to read as follows:

**CHAPTER 1503. OUTDOOR BURNING**

**1503.01 DEFINITIONS.**

As used in this chapter:

- (a) **APPROVED CONTAINER** means a commercially manufactured container designed for burning.
- (b) **ATTENDANCE** means the constant presence of a responsible person in the immediate vicinity of open burning, a bonfire or a recreational fire until the fire is extinguished, with a minimum of one (1) portable fire extinguisher having a minimum of a 4-A rating or other approved on-site fire extinguishing equipment such as dirt, sand, a water barrel, a garden hose or a water tank truck available for immediate use.

- (c) **BONFIRE** means a type of outdoor burning characterized by an outdoor fire having a total fuel area greater than that contained in a recreational fire and used for ceremonial purposes.
- (d) **OBJECTIONABLE** means undesirable or offensive or of a character as to give painful or unpleasant sensations.
- (e) **OPEN BURNING** means a type of outdoor burning characterized by the burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. Open burning does not include road flares, smudge pots and similar devices associated with safety or occupational uses typically considered open flames or recreational fires. For the purpose of this definition, a chamber shall be regarded as enclosed when, during the time combustion occurs, only apertures, ducts, stacks, flues or chimneys necessary to provide air and permit the exhaust gas are open.
- (f) **RESIDENTIAL WASTE** means any matter, including landscape wastes, generated on a one-, two- or three-family residence as a result of residential activities, but not including garbage.
- (g) **RECREATIONAL FIRE** means a type of outdoor burning characterized by an outdoor fire burning materials other than waste where the fuel being burned is not contained in an incinerator, outdoor fireplace, barbecue grill or barbecue pit and has a total fuel area of three feet or less in diameter and two feet or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes.
- (h) **STACK** or **CHIMNEY** means a vertical structure containing one or more flues for the purpose of carrying gaseous products of combustion and air from a fuel-burning appliance to the outside atmosphere meeting the requirements of the Ohio Mechanical Code.
- (i) **STRUCTURE** means that which is built or constructed.
- (j) **WASTE** means any discarded or useless material, including, but not limited to, agricultural waste, garbage, land clearing waste, landscape waste, residential waste and trash.

**1503.02           RELATION TO OTHER PROHIBITIONS.**

- (a) Notwithstanding any provision in this chapter, no outdoor burning shall be conducted in any area where an air alert, warning or emergency under Ohio Administrative Code is in effect.
- (b) No provision of this chapter and no permission granted by the Ohio Environmental Protection Agency shall exempt any person from compliance with any section of the Ohio Revised Code, or any regulation of any state or any ordinance or regulation dealing with open burning.
- (c) The Chief of Fire or his or her designee shall prohibit outdoor burning that will be offensive or objectionable due to smoke odor emissions or when atmospheric conditions or local circumstances make such fires hazardous. The Chief of Fire or his or her designee shall order the

extinguishment, by the permit holder or the Division of Fire, of any outdoor burning that creates or adds to a hazardous or objectionable situation.

**1503.03 RESTRICTIONS; NOTICE AND PERMISSION.**

- (a) No person shall cause or allow outdoor burning in the Municipality, except as provided in subsections (b) through (g) hereof.
- (b) When permitted by the property owner, outdoor burning shall be allowed for the following purposes without notification to or permission from the Ohio Environmental Protection Agency or the Chief of Fire or his or her designee:
  - (1) the cooking of food for human consumption utilizing appliances designed for cooking with charcoal, wood, stove fuel or cooking gas. The following conditions shall be met when cooking utilizing open burning or an open flame:
    - A. Charcoal burners utilizing charcoal briquettes, including wood chips, shall not be operated on balconies, porches, and decks or within ten feet of any combustible material or structure or within fifteen feet of the public right of way.
    - B. Liquid petroleum, gas-fueled cooking devices shall not be operated on balconies, porches or decks, or within ten feet of any combustible material or structure or within fifteen feet of the public right of way.
    - C. Fire in appliances designed for cooking utilizing seasoned dry firewood shall be permitted provided that such devices shall not be located on balconies, porches, and decks or within twenty-five feet of any combustible material or structure or within fifteen feet of the public right of way.
  - (2) open burning conducted in an approved container (for example, a chiminea), which shall not be located within twenty-five feet of a structure or combustible material or within fifteen feet of the public right of way. Conditions such as combustible materials or strong winds that could cause a fire to spread to within twenty-five feet of a structure shall be eliminated prior to ignition.
  - (3) recreational fires (for example, a fire pit or barbeque pit), which shall not be located within twenty-five feet of a structure or combustible material or within fifteen feet of the public right of way. The pile size shall be limited to three feet or less in diameter and two feet or less in height. Conditions such as combustible materials or strong winds that could cause a fire to spread to within twenty-five feet of a structure shall be eliminated prior to ignition.

- (4) heating of tar, welding, use of acetylene torches or highway safety flares, heating for warmth of outdoor workers, smudge pots and similar occupational needs.
- (c) Fires allowed by subsection (b)(2) and (3) hereof shall not be used for waste disposal purposes and shall be of minimum size sufficient for the intended purpose, and the fuel shall be chosen to minimize the generation of air contaminants.
- (d) Outdoor burning shall be allowed for the following purposes with prior notification to the Ohio Environmental Protection Agency in accordance with paragraph (B) of Rule 3745-19-05 of the Ohio Administrative Code or substantially similar code section, and after the issuance of a permit by the City for the following purposes:
  - (1) the open burning of beach debris only on the inaccessible beaches of Lake Erie and inaccessible beaches of the Rocky River Harbor, which border the City, and only if such burning is supervised at all times. Beach debris, which may be burned under this section, shall be limited to natural wood or untreated lumber.

Every applicant for a permit under this section shall file with the Chief of Fire or his or her designee a written application stating the applicant's full name, complete address of the applicant, phone number, and a copy of the Ohio Environmental Protection Agency permit granting permission for open burning. The application shall also contain the following:

- A. the reason the burning is necessary;
- B. the location and/or the premises where the burning is to be conducted;
- C. the date and start and end time at which the applicant desires to conduct the open burning;
- D. a description of the debris to be burned;
- E. the method of fire control to be used; and
- F. the signature of the applicant and any other responsible person who will supervise the open burning.

The Chief of Fire or his or her designee shall only issue those permits that are reasonably necessary to guarantee the public health and safety.

- (2) the prevention or control of disease or pests.
- (3) ceremonial purposes, including bonfires, provided each of the following conditions is met:

- A. The ceremonial fire shall be less than five feet high by five feet wide. The fire may not burn longer than three hours.
- B. Fuel for the ceremonial fire shall consist of only seasoned dry firewood and shall be ignited using a small quantity of paper.
- C. A ceremonial fire shall not be conducted within fifty feet of a structure or combustible material. Conditions such as combustible materials or strong winds that could cause a fire to spread within fifty feet of a structure shall be eliminated prior to ignition.
- D. A responsible person shall constantly be in attendance at ceremonial fires until the fire is extinguished. This person shall have fire-extinguishing equipment readily available for use as deemed necessary by the Chief of Fire or his or her designee.

All permits shall be requested by and issued to the owner of the land upon which the ceremonial fire is to be kindled following the application requirements outlined in subsection (d)(1) hereof.

- (e) Fires allowed by subsections (d)(1), (d)(2) and (d)(3) hereof shall not be used for waste disposal purposes, and the fuel shall be chosen to minimize the generation and emission of air contaminants.
- (f) Open burning shall be allowed for the following purposes upon receipt of written permission from the Ohio Environmental Protection Agency in accordance with Ohio Administrative Code Rule 3745-19-05, provided that any conditions specified in the document giving permission are followed:
  - (1) disposal of ignitable or explosive materials where the Ohio Environmental Protection Agency determines that there are no other practical alternate methods of disposal;
  - (2) instruction in methods of fire fighting or for research in the control of fires;
  - (3) in emergency or other extraordinary circumstances, any purpose determined to be necessary by the Ohio Environmental Protection Agency;
  - (4) recognized horticultural, silvicultural, range or wildlife management practices; and
  - (5) fires and/or pyrotechnic effects, for the purposes other than waste disposal, set as part of commercial film making or video production activities for motion pictures or television.
- (g) No outdoor burning shall be allowed in the Municipality unless a responsible person is in attendance.

**1503.04 NUISANCE.**

The emission or escape of air contaminants into open air from any source or sources or control equipment in such a manner or in such amounts as to endanger or tend to endanger the health, comfort, safety or welfare of the public, or that is reasonably offensive and objectionable to the public, or that shall cause unreasonable injury or damage to the property or interfere with the comfortable enjoyment of property or normal conduct of business, is hereby found and declared a public nuisance. No person shall cause, permit or maintain any such public nuisance.

**1503.99 PENALTY.**

The Chief of Fire or his or her designee is hereby authorized to issue a hazard correction notice or citation to whoever violates any provision of this chapter. Whoever violates any provision of this chapter will be issued a hazard correction notice on the first offense. Whoever violates any provision of this chapter on a second offense within one year of any prior offense shall be guilty of a minor misdemeanor. Whoever violates any provision of this chapter on a third or subsequent offense within one year of any prior offense shall be guilty of a misdemeanor of the fourth degree

Section 2. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all such deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Adopted: September 8, 2010

Kevin M. Butler  
PRESIDENT

Mary T. Hagan  
CLERK

Approved: 9/14/10

Ed Fitzgerald  
MAYOR