

NEW TOWN CODE

Secs. 42-74—42-90. Reserved.

ARTICLE IV. OPEN BURNING

Sec. 42-91. Title.

This article shall be known as the "Town of Smithfield Ordinance for the Regulation of Open Burning".

Sec. 42-92. Purpose.

The purpose of this article is to protect public health, safety, and welfare by regulating open burning within the town to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This article is intended to supplement the applicable regulations promulgated by the state air pollution control board and other applicable regulations and laws.

Sec. 42-93. Definitions.

For the purpose of this article and subsequent amendments or any orders issued by the town, the words or phrases shall have the meaning given them in this section:

Automobile graveyard means any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

Clean burning waste means waste which does not produce dense smoke when burned and is not prohibited to be burned under this article.

Construction waste means solid waste which is produced or generated during construction of structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulation of the state waste management board.

Debris waste means stumps, wood, brush, and leaves from land clearing operations.

Demolition waste means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction waste.

Garbage means rotting animal and vegetable matter accumulated by a household in the course of ordinary day to day living

Hazardous waste means refuse or combination of refuse which, because of its quantity, concentration or physical, chemical or infectious characteristics may:

- (1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or

- (2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed.

Household refuse means waste material and trash normally accumulated by a household in the course of ordinary day to day living.

Industrial waste means all waste generated on the premises of manufacturing and industrial operations such as, but not limited to, those carried on in factories, processing plants, refineries, slaughter house, and steel mills.

Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

Landfill means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See solid waste management regulations (9VAC 20-80-10 et seq.) for further definitions of these terms.

Open burning means the burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without passing through a stack, duct or chimney.

Open pit incinerator means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain destructors and over draft incinerators.

Refuse means trash, rubbish, garbage and other forms of solid or liquid waste, including, but not limited to, wastes resulting from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management and emergency operations.

Salvage operation means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

Sanitary landfill means an engineered land burial facility for the disposal of household waste which is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, non-hazardous sludge, hazardous waste from conditionally exempt small quantity generators, and non-hazardous industrial solid waste. See solid waste management regulations (9VAC 20-80-10 et seq.) for further definitions of these terms.

Smoke means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

Special incineration device means a pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

Cross reference—Definitions generally, § 1-2.

Sec. 42-94. Prohibitions on open burning.

(a) No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of refuse except as provided in this article.

(b) No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide firefighting instruction at firefighting training schools having permanent facilities.

(c) No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the disposal of commercial/industrial waste.

(d) Open burning or the use of special incineration devices permitted under the provisions of this article does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this article. In this regard special attention should be directed to Code of Virginia, § 10.1-1142 of the Forest Fire Law of Virginia, the regulations of the state waste management board, and the state air pollution control board's regulations for the control and abatement of air pollution.

(e) Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9 VAC 5 Chapter 70 (9VAC 5-70-10 et seq.) or when deemed advisable by the state air pollution control board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

Sec. 42-95. Exemptions.

The following activities are exempted to the extent covered by the state air pollution control board's regulations for the control and abatement of air pollution:

- (1) Open burning for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel;
- (2) Open burning for campfires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation food, and for warming of outdoor workers;
- (3) Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;
- (4) Open burning for forest management and agriculture practices approved by the state air pollution control board; and
- (5) Open burning for the destruction of classified military documents.

Private Property

Sec. 42-96. Permissible open burning.

(a) Open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property, provided that ~~the~~ these conditions are met:

- (1) The burning takes place on the premises of the private property;
- (2) The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and

(b) Open burning is permitted for disposal of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations which may be approved by the designated local official, provided the following conditions are met:

- (1) All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by the town manager and fire chief;
- WJA* (2) The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;
- WJA* (3) The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;
- WJA* (4) The burning shall be conducted at the greatest distance practicable from highways and airfields;
- WJA* (5) The burning shall be attended at all times and conducted to ensure the best possible combustion with the minimum of smoke being produced;
- (6) The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and
- WJA* (7) The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

(c) Open burning is permitted for the disposal of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas provided that the following conditions are met:

- (1) The burning shall take place on the premises of a local sanitary landfill which meets the provisions of the regulations of the state waste management board;
- (2) The burning shall be attended at all times;

- (3) The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning construction waste, clean burning debris waste, or clean burning demolition waste;
- (4) All reasonable effort shall be made to minimize the amount of material that is burned;
- (5) No materials may be burned in violation of the regulations of the waste management board or the state air pollution control board. The exact site of the burning on a local landfill shall be established in coordination with the regional director and the town manager and the fire chief; no other site shall be used without the approval of these officials. The town manager and the fire chief shall be notified of the days during which the burning will occur.

(d) Subsections (a) – (d) notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device during June, July or August.

Sec. 42-97. Permits.

(a) When open burning of debris waste, section 42-96(c) or open burning or debris on the site of a local landfill, section 42-96(a) is to occur within the town, the person responsible for the burning shall obtain a permit from the town manager and fire chief prior to the burning. Such a permit may be granted only after confirmation by the town manager and the fire chief that the burning can and will comply with the provisions of this article and any other conditions which are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the state air pollution control board's regulations for the control and abatement of air pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by the town manager and the fire chief.

(b) Prior to the initial installation and operation of special incineration devices, the person responsible for the burning shall obtain a permit from the town manager, such permits to be granted only after confirmation by the town manager and the fire chief that the burning can and will comply with the applicable provisions in regulations for the control and abatement of air pollution and that any conditions are met which are deemed necessary by the town manager and the fire chief to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

- (1) All reasonable effort shall be made to minimize the amount of material that is burned. Such effort shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.
- (2) The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.
- (3) The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If the town manager or the fire

chief determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.

- (4) The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.
- (5) The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.
- (6) The use of special incineration devices shall be allowed only for the disposal of debris waste, clean burning construction waste, and clean burning demolition waste.
- (7) Permits issued under this subsection shall be limited to a specific period of time deemed appropriate by the town manager and the fire chief.

(c) An application for a permit under section 42-97^(b)(a) or ^(c)(b) shall be accompanied by a processing fee as set by the Town Council.

Sec. 42-98. Penalties for Violation.

(a) Any violation of this article is punishable as a class 1 misdemeanor. See Code of Virginia, § 15.2-1429.

(b) Each separate incident may be considered a new violation.

Sec. 42-99. Waivers.

(a) A waiver from any provision of this article may be granted by the Town Council.

(b) Waivers under subsection (a) of this section shall be executed through a memorandum of understanding between the ~~board~~ Town Council and affected party and may include such terms and conditions as may be necessary to ensure that the objectives of this article are met by the waiver.