

**ORDINANCE NO. 2006-1576**

**AN ORDINANCE PROHIBITING AND  
REGULATING OPEN BURNING IN THE CITY OF  
ATHENS, ALABAMA**

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WHEREAS, unregulated open burning constitutes a danger and a nuisance to the citizens of the City of Athens, Alabama;

WHEREAS, the Fire Department of the City of Athens, Alabama has worked with citizens for many years to control and regulate open burning;

WHEREAS, the Athens City Council desires to strengthen the City's ability to protect its citizens from unregulated open burning; and

**THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA**, while in regular session on March 13, 2006 at 5:30 p.m., as follows:

**Section 1.** That the following ordinance be enacted:

**ATHENS OPEN BURNING PERMIT ORDINANCE**

**Section 1. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Fire marshal* means the (i) fire chief, (ii) fire marshal, and/or (iii) any person designated by the fire chief in writing and acting under the fire chief's supervision, charged with the administration and enforcement of the fire prevention code. He or his duly authorized representative is charged with the responsibility for investigation of all fires that occur within the city.

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

**Section 2. Purpose.**

This article is enacted to protect, preserve and promote the safety and welfare of the citizens of the city through the reduction, control and prevention of open burning.

**Section 3. Method of enforcement.**

The fire marshal and any law enforcement officer are authorized to issue citations to appear in municipal court to answer charges of violations of any of the provisions of this article.

**Section 4. Penalties.**

Any person who violates or fails or refuses to obey or comply with any provision of this article shall upon conviction be punished, in addition to such other punishment, including a term of community service, as may be provided by the court, by minimum fines and penalties, for a first conviction of \$100.00 or by imprisonment for not more than ten days. For conviction of a second offense committed within one year after the date of the first offense, such person shall be punished by a fine of \$200.00 or by imprisonment for not more than 30 days or by both such fine and imprisonment. For conviction of a third or subsequent offense committed within one year after the date of the first offense, such person shall be punished by a fine of \$500.00 or by imprisonment for not more than three months or by both such fine and imprisonment.

**Section 5. Exemptions.**

Nothing contained in this article shall be construed as applying to the regular military or naval forces of the United States, the duly authorized militia of the state, or the police, utility and fire departments in the proper performance of their duties (including, but not limited to training exercises).

**Section 6. Exceptions based on undue hardship.**

Applications for a permit for exception from the standards or requirements designated in this article may, on the basis of undue hardship, be made to the fire marshal. Any permit granted under this article shall contain all conditions upon which the permit has been granted and shall specify a reasonable time the permit shall be effective. The fire marshal may grant the exception as applied for only if the applicant represents and the fire marshal finds that open burning as permitted will not violate recognized safety standards, that no other reasonable alternative is available to the applicant, and that the burning can be conducted in such a manner as to be consistent with the purposes of this article. Upon the issuance of any exception

permit, the fire marshal may prescribe any reasonable conditions or requirements he deems necessary to minimize adverse effects upon the community.

**Section 7. Compliance.**

No person shall cause, suffer, allow or permit open burning except as specifically permitted by this article.

**Section 8. Exceptions to prohibition; Permits.**

- (a) Open burning may be conducted upon obtaining an approved permit from the fire marshal. The permit is subject to the limitations set forth thereon by the fire marshal, as well as the limitations in this section. The fire marshal's approval of a permit shall be based upon his judgment as to the fire safety potential of the proposed open burning activity.
- (b) The following provisions apply to the fire marshal's issuance of and/or conditions upon any permit:
  - 1. The burning will take place on days and hours designated by the fire marshal.
  - 2. The fire marshal may deny or restrict a permit according to weather conditions.
  - 3. Any open burning shall be constantly attended until the fire is extinguished. A minimum of one portable extinguisher with a minimum if 4-A rating or other on-site fire extinguishing equipment approved by the fire marshal, such as dirt or sand with proper equipment, garden hose or water truck shall be available for immediate use.
  - 4. All applicable fire codes and ADEM outdoor burn regulations must be followed.
  - 5. Only vegetation and untreated wood may be burned. One may not open burn heavy oils, asphalt products, plastics, vinyl materials, insulation, paper, cardboard, natural or synthetic rubber, salvage or scrap materials, chemicals, garbage, treated or painted wood, or any trash.
  - 6. The location for any open burning shall not be less than 50 feet from any structure, and provisions shall be made to prevent the fire from spreading to within 50 feet of any structure, except where as follows:

- a. Fires in approved containers that are not less than 15 feet from any structure.
  - b. The minimum required distance from a structure shall be 25 feet where the pile size is 3 feet or less in diameter and 2 feet or less in height.
- (c) Permits shall only be issued to (i) the owner of the land where the open burning shall occur, or (ii) a person assuming responsibility for the open burning and presenting satisfactory evidence of permission from the owner of the land where the open burning shall occur,
- (d) The granting of a permit shall in no way relieve the person responsible for such open burning from the consequences of or the damages or injuries resulting from such burning.
- (e) Open burning activities as specified below may be conducted without an open burning permit. Notification of intent to conduct such activity as specified below shall be made to the fire marshal 24 hours prior to the time the open burning activity is to begin. The person conducting any of the following open burning activities shall be responsible for the consequences of such activities and all damages or injuries resulting from such open burning:
- 1. Smokeless flares or safety flares for the combustion of waste gases.
  - 2. Fires used for agricultural, horticultural and silvicultural purposes, when specifically recommended by the state extension service or the state forestry commission, provided such fires are conducted only in situations where the actual burning is at least 1,000 feet from the closest occupied building.
  - 3. Fires used to destroy pests, germs, dead animals, etc., when the open burning is being conducted in accordance with or under the direct supervision of personnel of the local or state health department.
- (f) No open burning permit is required for fires used for cooking of food, including barbecues and outdoor fireplaces, so long as only clean fuel not containing garbage, rubber, plastics or other refuse is permitted.
- (g) Open burning permits may be issued subject to specific conditions, consistent with standards provided in this division, in which case the conditions shall be specified in writing. The holder of a permit shall comply with conditions contained in such permit as well as all applicable provisions of this article.

## **Section 9. Permit Procedure**

- (a) Applications for open burning permits shall be in the form prescribed by the fire marshal and shall give all the information necessary to enable the fire marshal to make the determinations required in this division. Applications should be submitted within a reasonable time prior to the requested burn date.
- (b) The fire marshal shall act, within a reasonable time, on an application for an open burning permit and shall notify the applicant of the approval, conditional approval or denial.
- (c) The fire marshal may issue permits by telephone in connection with residential burning of leaves and limbs, or with respect to the open burning of fires of less than a 3 foot x 3 foot area. Otherwise, the fire marshal or his authorized representative must visually inspect the proposed site of the open burn.
- (d) Open burning permit fees in the amount of \$25.00 per permit shall be paid at the time of application. Fees shall be made payable to the city and shall be nonrefundable. However, there shall be no permit fee with respect to (i) the residential burning of leaves and limbs, and (ii) ceremonial bonfires by schools and churches.

## **Section 10. Transfer of Permit.**

Open burning permits shall not be transferable whether by operation of law or otherwise, either from one location to another, or from one person to another.

## **Section 11. Expiration of Permit.**

Open burning permits shall expire on the date specified on the face of the permit. In no event, however, may an open burning permit be issued which has an expiration date of longer than ten days from the burn start date.

## **Section 12. Revocation Permit.**

Any open burning permit granted by the fire marshal may be revoked, after notice and hearing, for any of the following causes:

- (a) Failure to comply with the provisions of this article.

- (b) Failure to comply with any conditions of the open burning permit.
- (c) For any other cause if, in the judgment of the fire marshal, continuance of the permit is not consistent with the purposes of this article.

**Section 2.** This Ordinance shall become effective upon its adoption as provided by law.

**Section 3.** If any provision of this Ordinance, or the application thereof to any person, thing or circumstances, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the provisions or application of this ordinance that can be given effect without the invalid provisions or application, and to this end, the provisions of this code and such amendments and statutes are declared to be severable.

**Section 4.** The provisions of this Ordinance shall be included and incorporated in the Code of Ordinance of the City of Athens as an addition or amendment thereto, and shall be appropriately renumbered as necessary to conform to the uniform numbering system of the Code.

**ADOPTED** this the 13<sup>th</sup> day of March, 2006.

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RONNIE MARKS, CITY COUNCIL PRESIDENT

**APPROVED** this the 13th day of March, 2006.

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DAN WILLIAMS, MAYOR

ATTEST:

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JOHN HAMILTON, CITY CLERK

**CERTIFICATION OF CITY CLERK**

STATE OF ALABAMA     )

LIMESTONE COUNTY    )

I, John Hamilton, City Clerk of the City of Athens, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an Ordinance duly adopted by the City Council of the City of Athens, Alabama, on the 13th day of March, 2006.

Witness my hand and seal of office this 13<sup>th</sup> day of March, 2006.

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John Hamilton, City Clerk