



Open Burning in Cities

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I. Introduction

From the first spark through the last dying ember, wildfires burn a destructive, expensive, and often tragic path throughout Minnesota. Dry conditions, unbridled winds and reckless human conduct create situations where homes, crops and other valuable natural and constructed resources are destroyed and lives potentially lost. In an attempt to mitigate these and other fire-related concerns, substantial state and local regulations have been adopted.

This memo discusses “open fires” or “open burning” (open burning) in Minnesota. It examines the relevant statutory provisions and reviews the ability cities have to enact their own regulations. This memo also includes sample ordinances cities may consider when adopting their own regulations.

Whether or not open burning is allowed ultimately depends upon numerous factors, including the materials to be burned, where and how the fire is going to occur, as well as current environmental conditions that may or may not be conducive to a safe burn.

II. Open burning

[Minn. Stat. § 88.01, subd. 23.](#)

Open burning is defined as the burning of any matter that is not contained within a fully enclosed firebox, structure, or vehicle and from which the products of combustion (such as smoke and/or ash) are emitted directly to the open atmosphere without passing through a stack, duct, or chimney.

See Part II - B - *Exceptions*.
[Minn. Stat. § 88.16, subd. 1.](#)

The term “open burning” includes fires such as campfires and barbeques, as well as the backyard burning of yard wastes (grass clippings, tree trimmings, leaves, etc.) and even household refuse. Subject to specific exceptions, Minnesota law generally prohibits open burning without the written permission of a forester or local fire warden.

See Part IV - *Local regulation*.

Local authorities, including cities, have the ability to adopt more stringent local restrictions as long as they do not conflict with state statutes.

A. Written permission - permits

1. Required permits

[Minn. Stat. § 88.17, subd. 1\(a\).](#)

Subject to the exceptions described below, individuals intending to burn vegetative materials, such as grass, leaves, brush and untreated lumber, are generally required to first obtain permission in one of the following forms:

See Part II - A - 3 - *Issuing Authority*.

- A written permit issued by a person authorized by the commissioner of the Department of Natural Resources (DNR) or the commissioner's agent.
- An electronic permit issued by the commissioner, an agent authorized by the commissioner, or an internet site authorized by the commissioner.
- A general permit adopted by the county board of commissioners.

Minn. Stat. § 88.17, subd. 1(c).

Minn. Stat. § 88.17, subd. 1(b).

The burning permit will set the time and conditions by which the approved fire may be started and burned, including a specific listing of the materials that will be used as a fuel source. Permit holders must have the permit on their person and produce it for inspection when requested by a forest, conservation, or other peace officer.

Minn. Stat. § 88.17, subd. 1(b).

Permit holders are required to remain with their fire at all times. Before leaving the burn site, it is their responsibility to ensure the fires are completely extinguished.

Minn. Stat. § 88.17, subd. 1(b).

Fires may only be started on land owned by the permit holder, under the legal control of the permit holder, or with the written permission of the owner, lessee, or agent of that party. Violations of these provisions can result in criminal consequences.

See Part V - *Penalties*.

2. Special permits

See Part II - B - *Exceptions*.

State law has established two situations where special permits are required. Special permits are issued solely by DNR forestry officers, not fire wardens or other city officials.

a. Fire training

Minn. Stat. § 88.17, subd. 3(a).

[Live Fire Burn Training Procedures](#).

A special permit is required for fires started for firefighter training and instruction. Open burning conducted for firefighter training must follow the procedures for structural burn training provided by the Minnesota State College and University System.

b. Permanent tree and brush burning sites

Minn. Stat. § 88.17, subd. 3(b).

A special permit is also required for the operation of a permanent tree and brush burning site. The application must contain:

- The name, address, and telephone number of all owners of the proposed permanent open burning site.
- If the intended operator is different than the owner(s), the operator's name, address and telephone number.
- A general description of the materials to be burned, including the source and estimated quantity, dimensions of the site and burn pile areas, hours and dates of operation, and provisions for smoke management.

- A topographic or otherwise detailed map of the site and the area within a one-mile circumference, detailing all structures that may be affected by the operation.

Minn. Stat. § 88.17, subd. 3(b).

Only trees, tree trimmings or brush that otherwise may not be disposed through chipping, composting or other methods may be burned at a permanent open burning site. An open burning site must be located and operated in a manner that does not create a nuisance or endanger water quality. The commissioner will revoke permits to mitigate threats to public health, safety, and the environment in the event permit conditions are violated.

3. Issuing authority

A burning permit may be obtained from various sources, including:

- A DNR forestry office.
- A DNR fire warden – a volunteer commissioned by the DNR to issue open burning permits for a particular geographic area.
- City officials, such the city fire marshal, fire chief, police chief or other official, designated as the DNR fire warden for the jurisdiction.

4. Permit fees

a. Electronic permits

Minn. Stat. § 88.17, subd. 5(a).

The annual fees for a DNR-issued electronic burning permit are:

- \$5 for a noncommercial burning permit.
- \$5 per site permit for commercial enterprises, with a maximum \$50 per individual enterprise per year.

Minn. Stat. § 88.17, subd. 5(c).

If an electronic point of sale system is used, \$1 from the \$5 fee is to be retained by the permitting agent as a commission. Electronic permits issued through internet sales are not subject to this commission.

b. Written permits

Minn. Stat. § 88.17, subd. 5(d).

Fire wardens that issue written permits may charge a fee of up to \$1 for each permit issued. This fee is retained by the warden as a commission for issuing the permit.

c. Local permits

Minn. Stat. § 88.17, subd. 5(d).

Local jurisdictions, including cities, are not restricted by statute from charging an administrative fee for issuing open burning permits within its jurisdiction. The permit fee should be established by the council and included within the city's fee schedule ordinance.

See “Setting Municipal Fees,”
Minnesota Cities (Apr. 2004, p.19).

The issuance of permits should not, however, be considered a significant source of city revenue. Fees imposed should bear a relationship to the direct and indirect costs associated with the regulation of open burning within the city’s jurisdiction, not merely based upon what other cities charge.

B. Exceptions

An open burning permit is not, pursuant to state statute, required for:

Minn. Stat. § 88.16, subd. 2(a).
Minn. Stat. § 88.01, subd. 26.

- A fire started when the ground is ***snow covered***. “Snow-covered” means the ground has a continuous, unbroken cover of snow, to a depth of three inches or more, surrounding the immediate area of the fire, sufficient to keep the fire from spreading.

Minn. Stat. § 88.16, subd. 2(b).
Minn. Stat. § 88.01, subd. 25.

- A ***campfire***. “Campfire” means a fire set for cooking, warming, or ceremonial purposes, which is not more than three feet in diameter by three feet high, with all combustible materials cleared at least five feet from the base of the fire.

Minn. Stat. § 88.16, subd. 2(c).

- A fire contained in a charcoal grill, camp stove, or other ***device designed for the purpose of cooking or heating***.

Minn. Stat. § 88.16, subd. 2(d).

- A fire in a DNR-approved burner.

C. Fires in DNR-approved burners

Minn. Stat. § 88.16, subd. 2(d).

Fires in DNR-approved burners are allowed, provided:

- The burner is only used to burn dried vegetative materials and other materials allowed by statute or rule.
- The burner is of a design which has been approved by the DNR commissioner.
- No combustible materials are located within five feet of the base of the burner.
- When the ground is not snow-covered, the approved burner is only in use between the hours of 6 p.m. and 8 a.m. the following day.

During periods where the ground is covered with at least three inches of unbroken snow, a burner could be used outside this prescribed window without first obtaining an open burning permit.

An approved burner:

- Is constructed with non-combustible materials.
- Will have a capacity of at least three bushels.

- Will be maintained with a minimum burning capacity of at least two bushels.
- Will have a cover and will remain closed during its use.
- Will not have any openings in its cover or sides larger than one inch.
- Is only used when open burning is allowed.

[DNR Approved Burner Plan.](#)

The DNR web site provides a detailed, illustrated model for a burner that will satisfy minimum design requirements.

Use of an unapproved burner, or the use of an approved burner between the hours of 8 a.m. and 6 p.m. (and the ground is not “snow covered”) is not allowed without first obtaining an open burning permit.

See Part IV - A - [Local ordinances.](#)

It is possible that the local jurisdiction has adopted an ordinance more restrictive than state law that requires first obtaining a local permit, or bans the use of these burners altogether.

III. Prohibited burning

Just as our open burning laws provide exceptions where written permission is not required, there are also circumstances where, based upon the materials to be used or when particular environmental concerns arise, burnings are permanently or conditionally prohibited.

A. Prohibited materials

[Minn. Stat. § 88.171.](#)

Even if an open burning permit is issued or one of the exceptions are met, individuals are generally prohibited from the open burning of:

- Rubber
- Plastics
- Chemically treated materials (including treated lumber)
- Tires
- Railroad ties
- Tar paper
- Insulation
- Sheetrock
- Wiring
- Paint or paint filters

Minn. Stat. § 116.06, subd. 11.

- Oil
- Hazardous wastes
- Industrial solid waste
- Demolition debris
- Salvage operations
- Motor vehicles

This list is not specific or exclusive, but more an indication of the types of prohibited materials. The prohibition on the open burning of such materials is in effect at all times.

Minn. Stat. § 88.171, subd. 2.

However, the commissioner of health or a local health agency (typically a county health board) may make a determination that burning is necessary to abate a public nuisance. In these instances, the DNR may provide a specific exception and allow prohibited materials to be burned. As an example, after a natural disaster (such as a tornado), the DNR may allow the open burning of treated or painted wood if there is no prudent alternative.

Minn. Stat. § 88.171, subd. 4.

The DNR is also authorized to allow the burning of raw, untreated wood from an industrial or manufacturing process or from a service or commercial structure if recycling, reuse, or land disposal is not feasible.

B. Garbage

Minn. Stat. § 88.171, subd. 8(a).

Since 1969, the burning of household garbage has been prohibited in Minnesota. “Garbage” is defined as discarded material resulting from the handling, processing, storage, preparation, serving or consumption of food.

Minn. Stat. § 88.171, subd. 8(b).

However, a Minnesota county may, by resolution, allow a resident to conduct open burning of the garbage generated at that resident’s household upon the county board’s determination that regularly scheduled pickup of the material is not reasonably available.

C. Farm solid waste

Minn. Stat. § 17.135.

Unless regularly scheduled waste pickup is reasonably available (as determined by resolution of a county board), a person who owns or operates land used for farming may bury, or burn and bury, solid waste generated from the person’s household or as part of the farming operation. Waste must be buried in a nuisance-free, pollution-free, and aesthetic manner on the land used for farming. This exemption will not apply to the burning (or burial) of:

- Tires
- Plastics (except plastic baling twine)

[Minn. Stat. § 115A.96, subd. 1.](#)

[Minn. Stat. § 115A.03, subd. 17a.](#)

- Household hazardous wastes
- Appliances
- Household batteries
- Used motor oil
- Lead acid batteries from motor vehicles

D. Burning bans

[Minn. Stat. § 88.171, subd. 9.](#)

No person is allowed to conduct, cause or permit open burning during a burning ban put in place by a city, county, or state department or agency. Since 1999, the DNR has adopted statewide burning restrictions each spring, typically a time with a higher degree of fire danger.

[DNR Wildfire Information Center.](#)

When dry conditions warrant, the DNR or another unit of government can impose an absolute burning ban within a particular geographic area or jurisdiction. Burning bans are generally imposed in only the most severe conditions. When possible, use restrictions or the non-issuance (or revocation) of burning permits are more likely to occur.

E. Harmful effects

[MN Pollution Control Agency \(MPCA\)
Don't Burn Your Garbage Toolkit.](#)

Whether illegal or allowed through an exception, the burning of household or other wastes raises substantial environmental and health concerns. Home or farm burnings produce low temperature fires, regardless of the device or method used (fire pits, burn barrels, wood stoves, fireplaces or other design). These fires receive little oxygen and discharge a tremendous amount of smoke. Such smoke contains various toxic substances that are released into the air very close to ground level, potentially polluting the air, soil and waters with acidic gases, heavy metals and other pollutants at levels many times greater than those discharged at municipal and county incinerators.

IV. Local regulation

While statutes provide many absolutes in regard to open burning in Minnesota, from defining the circumstances when burning permits are mandatory to establishing criteria for the types of materials where burning is prohibited, cities have the ability participate in the regulatory process or provide additional burning restrictions.

A. Local ordinances

Cities may generally adopt open burning ordinances that are more restrictive than state statutes, as long as those ordinances do not contradict statutory provisions. A local jurisdiction may not waive the formal permitting process beyond the exceptions provided in statute. Likewise, a city may not allow the open burning of any materials specifically prohibited by state statute.

A city may consider:

See [Appendix A](#).

See Part II - A - 4 - c - [Local permits](#).

- Adopting a local open burning ordinance.
- Establishing administrative fees for the costs incurred issuing open burning permits.
- A further restriction on the hours when open burning may be lawfully conducted.
- Restrictions on the materials that may be used as fuel for open burning.
- Restrictions on the distance recreational fires may be from homes, property lines and streets.
- Requiring individuals to first obtain a local permit prior to conducting a campfire or other recreational fire.

See Part III – D - [Burning bans](#).

- A prohibition when local conditions would make open burning particularly dangerous.
- Providing a city official (such as the fire chief, marshal, or designee) the authority to declare open burning bans when dry conditions warrant.

See Part IV - B - [Open burning of leaves](#).

- If located outside of the metropolitan area, allowing the open burning of leaves.
- Imposing a ban on the burning of leaves.
- Prohibiting the use of all burners, including DNR-approved burners.

See Part V - [Penalties](#).

- Providing criminal consequences for non-compliance with local regulations.

See “Consider Ordinances before Adopting,” *Minnesota Cities* (Sept. 2007, p. 39).

When adopting a local open burning ordinance, the city should consider the costs involved in regulation and enforcement. It is important that the provisions adopted are, in light of the city’s resources, actually enforceable.

B. Open burning of leaves

While the burning of leaves *without* an open burning permit issued by a DNR forestry official or one of its fire marshals is generally prohibited, there is one substantial exception in the statutes applicable to many, but not all, Minnesota cities.

[Minn. Stat. § 116.082.](#)

A home rule charter or statutory city located outside of the Twin Cities metropolitan area may allow the open burning of dried leaves within the city's jurisdiction. For purposes of this exception, the metropolitan area is defined as the area over which the Metropolitan Council has jurisdiction: Anoka, Carver, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague), and Washington counties.

[Minn. Stat. § 473.121, subd. 2.](#)

[Minn. Stat. § 116.082.](#)

To allow the open burning of leaves, non-metro cities must first adopt an ordinance and provide copies to the DNR and Minnesota Pollution Control Agency (MPCA). The adopted ordinance shall limit leaf burning to the period between Sept. 15 and Dec. 1. Additionally, the ordinance must include any conditions necessary to minimize air pollution, fire danger, or any other hazards and nuisance concerns. The open burning of leaves is prohibited during air pollution alerts, warnings, or emergencies as declared by the MPCA.

This is only an option, not a mandate, for eligible cities to allow leaf burning. A city ordinance can require obtaining a local permit, though permitting is not necessary pursuant to this specific statute. If a non-metro city decides the environmental, health, or nuisance concerns that accompany leaf burning outweigh the possible benefits, it can simply not adopt (or subsequently revoke) such a provision, or adopt an ordinance that would prohibit all leaf burning within its jurisdiction.

C. Fire wardens

[Minn. Stat. § 88.18.](#)

The DNR appoints local government officials, authorized MPCA agents, fire chiefs, or other responsible persons to be fire wardens. Fire wardens issue burning permits in accordance with all state and local open burning regulations within their respective districts.

[DNR Forestry Area Offices.](#)

It is common for one or more city officials to be commissioned a fire warden and assist the DNR in issuing open burning permits. City officials interested in becoming fire wardens should contact their local forestry office. This may be particularly beneficial in cities that have adopted additional regulations or restrictions on open burning; a local official may be in a better position to ensure that state, as well as any additional local, regulations are satisfied when burning permits are issued. In the absence of a city official becoming a fire warden, a DNR forest officer, county official or other appointed (but otherwise independent individual) will have the authority to issue state burning permits for that area.

D. Solid fuel-burning stoves

MPCA Wood Burning Best Practices.

Cities often inquire into their ability to regulate outdoor stoves (wood, corn or other solid fuels) that are used for heating homes, garages or other structures. As a fully-enclosed structure with a smokestack, duct or chimney, an outdoor fuel-burning stove is not considered open burning and subject to these statutory regulations.

See LMC information memo, *Public Nuisances*.

See Handbook, Chapter 12.

Because these stoves typically operate at ground level, can produce a substantial amount of smoke, and may constitute a nuisance activity, statutory and charter cities have the general authority to regulate their operation to protect the health, safety and general welfare of the community.

V. Penalties

Minn. Stat. § 88.195.

Individuals need to be aware they are responsible for their fires and possible criminal and civil consequences for their actions exist. A person is guilty of a misdemeanor if he or she:

Minn. Stat. § 88.195.

- Starts and fails to control or extinguish a fire.
- Has a burning permit, but fails to keep the fire contained within the area described.
- Has a burning permit, but fails to keep the fire restricted to the specified materials.
- Carelessly or negligently starts a fire that endangers or causes damage to the property of another.
- Participates in the careless or negligent use of motor vehicles, other internal combustion engines, firearms with tracers or combustible wads, fireworks, smoking materials, electric fences, torches, flares, or other burning or smoldering substances whereby a fire is started and is not immediately extinguished before the fire endangers or causes damage to the property of another.
- Operates a vehicle in a wildfire area when the ground is not snow-covered with an open exhaust cutout, without a muffler, without a catalytic converter if required, or without a spark arrestor on the exhaust pipe; or any person who operates a tractor, chainsaw, or other internal combustion engine not equipped to prevent fires.
- Fails to report an unauthorized fire burning upon their property, whether or not it was started by that person.
- Fails to remain with the fire at all times.
- Fails to completely extinguish a fire before leaving the burn area.

Minn. Stat. § 88.16, subd. 3.

Minn. Stat. § 88.17, subd. 1(b).

- Starts or causes a fire to be started on any land that is not owned or under their legal control without the written permission of the owner, lessee, or an agent of the owner or lessee of the land.

[Minn. Stat. § 412.231.](#)

State v. Phillips, 176 Minn. 472, 223 N.W. 2d 912 (1929).

Violations of a local open burning ordinance may also be misdemeanor offenses.

Violation of statutory sections may be prima facie (“on its face”) evidence of negligence in regard to the damages uncontrolled fires may cause to others.

VI. Safety and assistance

Open burning regulations and restrictions, whether those contained within state statutes and rules or adopted locally, attempt to provide safety to an inherently dangerous activity.

It is important for local officials to understand state laws and the reasons behind those provisions so they can determine how to enforce the laws and decide if additional local regulations are necessary to provide for their citizen’s safety, the protection of property, and to avoid detrimental environmental impacts.

Additional assistance is available from:

[DNR - Division of Forestry.](#)

Minnesota Department of Natural Resources

Forestry Division

500 Lafayette Road

St. Paul, MN 55155-4040

(651) 296-6157

(888) 646-6367

Part of the forestry division’s mission is to protect lives and property from wildfires. Field offices throughout the state can assist local officials with their questions and concerns.

[MPCA Pollution Control Agency \(MPCA\).](#)

Minnesota Pollution Control Agency

Office of Environmental Assistance

520 Lafayette Road

St. Paul, MN 55155-4194

(651) 296-6300

(800) 657 3864

MPCA works with Minnesotans to protect, conserve and improve our environment and enhance our quality of life.

Appendix A

LEAGUE OF MINNESOTA CITIES MODEL ORDINANCES REGULATING OPEN BURNING (April 2012)

Before adopting these ordinances, a city should be familiar with the contents of the LMC information memo "Open Burning in Cities" LMC 436C (April 2012).

INTRODUCTION AND INSTRUCTIONS:

These model open burning ordinances contain a number of provisions a city may adopt. A city wishing to adopt these ordinances should review them with the city attorney to determine which provisions are suited to the city's circumstances. A city can modify these ordinances by eliminating provisions that concern activities it does not seek to regulate. Because provisions within these ordinances are controlled by statute, the city attorney should review any modifications to ensure they conform to state law. In addition, the city attorney should review the entire ordinance before it is adopted because it establishes rights and responsibilities of both the city and the permit applicants and holders.

These model ordinances are drafted in the form prescribed by [Minn. Stat. § 412.191, subd. 4](#), for statutory cities. Home rule charters often contain provisions concerning how the city may enact ordinances. Home rule charter cities should consult their charter and city attorney to ensure that the city complies with all charter requirements.

These ordinances will affect existing burning permits. Therefore, a copy of the proposed ordinance should be mailed to each permit holder to inform them of its contents and provide them an opportunity to make their views known.

If your city has codified its ordinances, a copy of any open burning ordinance must be furnished to the county law library or its designated depository pursuant to [Minn. Stat. § 415.021](#).

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND REGULATING THE CONDUCT OF OPEN BURNING WITHIN THE CITY OF _____, MINNESOTA

THE CITY COUNCIL OF THE CITY OF _____ DOES ORDAIN:

SECTION 1. ADOPTION OF STATE LAW BY REFERENCE.

The provisions of Minn. Stat. ch. 88, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, permits, and all other matters pertaining to open burning are hereby adopted by reference and are made a part of this ordinance as if set out in full. It is the intention of the City Council that all future amendments of Minn. Stat. ch. 88, are hereby adopted by reference or referenced as if they had been in existence at the time this ordinance was adopted.

SECTION 2. CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

The Council is authorized to impose, and has imposed in this ordinance, additional restrictions on open burning within its limits beyond those contained in Minn. Stat. ch. 88, as it may be amended from time to time.

SECTION 3. PURPOSE.

The purpose of this ordinance is to regulate open burning within the City of _____, to protect the public health, safety and welfare. Through passage of this ordinance, the designated fire official is hereby authorized to adopt and impose burning restrictions to aid in the prevention of wildfire and to consult with the Department of Natural Resources (DNR), Division of Forestry to develop any restrictions or other criteria.

SECTION 4. DEFINITIONS.

For purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

DESIGNATED FIRE OFFICIAL. The Fire Chief, Fire Marshal, City Fire Warden, or other designee who provides fire protection or public safety services to the city.

OPEN BURNING. The burning of any matter if the resulting combustion products are emitted directly into the atmosphere without passing through a stack, duct or chimney, except a recreational or camp fire as defined herein. Mobile cooking devices such as charcoal grills, wood smokers, manufactured hibachis, and propane or natural gas devices are not considered open burning devices.

RECREATIONAL/CAMPFIRE. A fire set with an approved starter fuel no more than three (3) feet in height contained within a recreational fire site: using dry, clean wood, producing little detectable smoke, odor or soot beyond the property line; conducted with an adult tending the fire at all times; for recreational, ceremonial, or social food preparation; extinguished completely before quitting the occasion; and respecting weather conditions, neighbors, burning bans, and air quality requirements so that nuisance, health or safety hazards will not be created. No more than one recreational fire is allowed on any property at one time.

RECREATIONAL/CAMPFIRE SITE. An area of no more than a three (3) foot diameter circle (as measured from the inside of the fire ring or border); completely surrounded by non-combustible and non-smoke or odor producing material, either natural rock, cement, brick, tile, blocks or ferrous metal. Burning barrels are not a recreational fire site as defined herein. Recreational fire sites shall not be located closer than 25 feet to any structure or combustible material.

RUNNING FIRE. An attended fire allowed to spread through surface vegetative matter under controlled conditions for the purpose of vegetative management, forest management, game habitat management, or agricultural improvement.

STARTER FUELS. Dry, untreated, or unpainted kindling, branches, or charcoal fire starter. Paraffin candles and alcohols are permitted as starter fuels and as aids to ignition only. Propane gas torches or other clean gas burning devices causing minimal pollution may be used to start an open burn.

VEGETATIVE MATERIALS. Dry leaves, dry grass clippings, twigs, branches, tree limbs, untreated or unpainted wood that contains no glues or resins, and other similar materials. Paper and cardboard are not considered vegetative materials.

WOOD. Dry, clean fuels, such twigs, branches, limbs, manufactured fireplace logs, charcoal, cord wood, or untreated dimensional lumber. "Wood" does not include wood that is green with leaves or needles, rotten, wet, oil soaked, or treated with paint, glue or preservatives. Clean pallets may be used for recreational fires when cut into less than three foot lengths.

SECTION 5. PROHIBITED MATERIALS.

(A) No person shall conduct, cause or permit the open burning of oils, petroleum fuels, rubber, plastic, chemically treated materials, or other materials that produce excessive or noxious smoke such as, but not limited to: tires; railroad ties; treated, painted or glued wood composite shingles; tar paper; insulation; composition board; sheet rock; wiring; or paint and paint filters.

(B) No person shall conduct, cause or permit the open burning of: hazardous waste or materials from salvage operations; solid waste generated from an industrial or manufactured process; materials from a service or commercial establishment; or building materials generated from demolition of commercial or institutional structures.

(C) No person shall conduct, cause or permit the open burning of discarded materials resulting from the handling, processing, storage, preparation, serving or consumption of food.

Comment: *Cities may be more restrictive than state law and may provide additional optional burning restrictions, such as:*

(D) No person shall conduct, cause or permit the open burning of any leaves or grass clippings.

(E) No person shall conduct, cause or permit the open burning of any wood or other vegetative materials through the use of a burner, as described in Minn. Stat. § 88.16, within the city's jurisdiction.

SECTION 6. OPEN BURNING PROHIBITED EXCEPT BY PERMIT.

No person shall start or allow any open burning on any property in the city without first having obtained an open burning permit. A permit is not required for any fire which is a recreational/campfire as defined in Section 4.

Comment: *While this model ordinance does not require an individual to obtain a burning permit prior to conducting a recreational or campfire, the city should be aware that it is within its authority to remove "A permit is not required for any fire which is a recreational/campfire as defined in Section 4" and require permits for all open or recreational burnings.*

SECTION 7. PERMITTED OPEN BURNING; SPECIAL CIRCUMSTANCES.

(A) Under special or extraordinary circumstances, open burning permits may be issued by the city or by a DNR forestry official for:

- (1) Elimination of health hazard that cannot be abated by other practical means, as determined by the commissioner of health or the local health authority.
- (2) Ground thawing for utility repair and construction.
- (3) Running fires.
- (4) Disposal of vegetative matter for managing forest, prairie or wildlife habitat, and in the development and maintenance of land and rights-of-way where chipping, composting, land-spreading or other alternative methods are not practical.
- (5) Disposal of diseased trees generated on-site, diseased or infected nursery stock, or diseased bee hives.

(6) Disposal of unpainted, untreated, non-glued lumber and wood shakes generated from construction, where recycling, reuse, removal or other alternative disposal methods are not practical.

(B) Fire training permits may only be issued by the Minnesota Department of Natural Resources (DNR).

(C) Permits for the operation of a permanent tree and brush burning sites may only be issued by the Minnesota Department of Natural Resources (DNR).

SECTION 8. PERMIT APPLICATION AND FEES.

(A) Open burning permits shall be obtained by making application on a form prescribed by the DNR and adopted by the Fire Department. The permit application shall be presented to the designated fire official for review.

(B) An open burning permit shall require the payment of a fee. Permit fees shall be in an amount established by the Council.

SECTION 9. PERMIT PROCESS.

(A) The applicant shall demonstrate to the designated fire official the ability to comply with the applicable state statutes, this ordinance, or any additional guidelines as may be adopted.

(B) Upon receipt of the completed open burning permit application and fee, the designated fire official may, if he or she believes necessary, require a preliminary site inspection to locate the proposed burn site, note special conditions, and set dates and times of permitted burn and review fire safety considerations, including the preparation of a detailed burn event safety plan with the designated fire official, when conditions require.

***Comment:** Appendix B and C provide sample recreational fire permits and guidelines if a city decides to require permits for all or certain recreational fires.*

SECTION 10. DENIAL OF PERMIT.

(A) If the established criteria for the issuance of an open burning permit are not met, the application will be denied.

(B) Even if the established criteria for the issuance of an open burning permit are met, if it is determined that a practical alternative method for disposal exists, a pollution or nuisance condition would result, or if a burn event safety plan cannot be drafted to the satisfaction of the designated fire official, the application may be denied.

SECTION 11. PERMIT HOLDER RESPONSIBILITY.

(A) Prior to starting an open burn, the permit holder shall be responsible for confirming that no burning ban or air quality alert is in effect.

(B) The open burning site shall have appropriate communication and fire suppression equipment available.

(C) The open burn shall be attended to at all times. No fire may ever be allowed to smolder. The fire shall be completely extinguished before the permit holder or his or her representative leaves the site. It is the responsibility of the permit holder to have a valid permit, as required by this ordinance, available for inspection on site by law enforcement, the Fire Department, a Minnesota Pollution Control Agency (MPCA) representative or DNR officer.

(D) The permit holder is responsible for compliance and implementation of all general conditions, special conditions, and guidelines as established in the permit issued. The permit holder shall be responsible for all costs incurred as a result of the burn, including but not limited to fire suppression and administrative fees.

SECTION 12. REVOCATION OF PERMIT.

An open burning permit is subject to revocation at the discretion of a DNR officer or the designated fire official. Reasons for revocation include but are not limited to: a fire hazard existing or developing during the course of the burn; any permit conditions being violated during the course of the burn; pollution or nuisance conditions developing during the course of the burn; or a fire smoldering with no flame, or attendant, present.

SECTION 13. BURNING BAN OR AIR QUALITY ALERT.

(A) The designated fire official is authorized to determine when conditions make open burning potentially hazardous and declare a burning ban within the city.

(B) No recreational fire or open burn will be permitted when the city or the DNR has officially declared a burning ban due to potential hazardous fire conditions or when the MPCA has declared an air quality alert.

SECTION 14. PENALTY.

Any person convicted of violating any provision of this ordinance is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment for not more than ninety (90) days, or both, plus the costs of prosecution in either case.

SECTION 15. SEVERABILITY.

If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

SECTION 16. EFFECTIVE DATE.

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Passed by the Council this _____ day of _____, 20_____.

Mayor

Attested:

City Clerk

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND REGULATING THE OPEN BURNING OF LEAVES WITHIN THE CITY OF _____, MINNESOTA

THE CITY COUNCIL OF THE CITY OF _____ DOES ORDAIN:

SECTION 1. BURNING PERMITTED.

Subject to the provisions of the Minn. Stat. § 116.082, the open burning of dried leaves between September 15th and December 1st is hereby allowed, subject to the limits and conditions specified in this ordinance.

SECTION 2. LIMITS AND CONDITIONS.

The burning of leaves will only be permitted under the following limits and conditions:

- (A) The open burning of leaves will only be permitted between September 15th and December 1st.
- (B) Burning shall be limited only to the areas of the city zoned residential.
- (C) A fire shall not be less than five (5) feet from any property line or within 25 feet of any building, lumber pile, wood yard, hay stack, or other combustible material.
- (D) A responsible person shall be in constant attendance until the fire is completely extinguished.
- (E) Burning will only be allowed during daylight hours.
- (F) The burning of leaves is prohibited on city streets, alleys, sidewalks, boulevards, or any public parking by private citizens.
- (G) No burning shall take place during an air pollution alert, high fire danger, warning or other emergency declared by this city, the Minnesota Pollution Control Agency (MPCA), or the Minnesota Department of Natural Resources (DNR).
- (H) The Fire Chief, or another local fire authority designee, will have the authority to discontinue a burn when:
 - (1) A fire hazard exists or develops during the course of the burn.
 - (2) Any of the conditions of the permit are violated during the course of the burn.

(3) It is determined that the smoke emissions are offensive to occupants of the surrounding property.

Comment: *The city should be aware that while Minn. Stat. § 116.082 does not mandate a formal permit process, it is within its authority to require obtaining a permit prior to the open burning of leaves. This option could be addressed by:*

SECTION 2. PERMITS.

(A) Upon determination that all necessary precautions have been taken to protect life and property, the Fire Chief, City Clerk, or other authorized agent may issue a leaf burning permit.

(B) The cost of obtaining a permit to burn dried leaves shall be at such rate as approved from time to time by the City Council. The fee will be paid by the applicant upon receipt of permit.

(C) The permit shall be valid for a period of seven (7) days, beginning on the date of issuance.

SECTION 3. COPY TO STATE AGENCIES.

A copy of this Section, or any amendment thereof, shall be submitted to the MPCA and the DNR.

SECTION 4. PENALTY.

Any person convicted of violating any provision of this ordinance is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment for not more than ninety (90) days, or both, plus the costs of prosecution in either case.

SECTION 4. APPLICATION.

The provisions of this ordinance shall only apply to the burning of leaves. It is unlawful for any person to burn any materials prohibited under the City of _____ ordinances or state statute.

SECTION 5. SEVERABILITY.

If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

SECTION 6. EFFECTIVE DATE.

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Passed by the Council this _____ day of _____, 20_____.

Mayor

Attested:

Clerk

Appendix B

Recreational Fires - Open Burning Model Permit Guidelines

Below are the requirements to be followed to provide for the safe enjoyment of a recreational fire in the City of _____. A permit is required for all open burning. These requirements are based upon _____ City Ordinance No. _____ and all applicable state statutes. They are necessary to ensure safety, to protect private property, and to prevent the otherwise unnecessary dispatch of emergency equipment. Due to the inherent dangers around open flames, all permits are subject to the following conditions. Requirements must be strictly followed or the permit may be revoked.

1. A permit holder is required to call the City Open Burning Hotline at () - prior to starting the fire. There may be a temporary burning ban in place if conditions require.
2. Clearance from structures and combustible fencing must be at least ____ feet. Distance to property lines must be at least ____ feet.
3. Prevailing winds, at the time of the recreational burn, shall be away from nearby buildings and residences. Strong winds will cancel permit.
4. The burn shall be conducted as far away as practical from any public road and controlled so a traffic hazard is not created.
5. Size of the burn pile is limited to three feet in diameter and three feet in height. The ground within five feet of the base of the fire must be cleared of all combustible materials, including grass and weeds.
6. A recreational burning permit SHALL NOT be used for the purpose of disposing rubbish, trash, yard debris, leaves or combustible waste materials. Oils, rubber and other smoke producing materials shall not be burned or used as starting materials. Only firewood burning is allowed. Construction materials, including painted and treated lumber are not permitted.
7. The fire must be extinguished by _____.
8. A permit holder, or an authorized agent, shall be present for the duration of any fire authorized by a city-issued permit.
9. The permit shall be available for inspection at the burn site at all times.
10. Children shall be kept a safe distance away from all recreational fires.
11. Fire-extinguishing equipment, such as buckets, shovels, sand, or a garden hose shall be readily available at the burn site.
12. This permit is subject to inspection and revocation at the discretion of the local fire authority, a DNR Forest Officer, the chief of police or designee, or the permit issuer if:
 - A fire hazard exists or develops during the course of the burn.
 - Any of the conditions of the permit are violated during the course of the burn.
 - It is determined that the smoke emissions are offensive to occupants of the surrounding property.

I UNDERSTAND AND AGREE TO ABIDE BY THE RECREATIONAL BURNING GUIDELINES AS ESTABLISHED. I ACKNOWLEDGE THAT VIOLATIONS OF PERMIT CONDITIONS MAY SUBJECT ME TO CRIMINAL AND/OR CIVL ACTIONS AND/OR REVOCATION OF RECREATIONAL FIRE PERMIT PRIVILEDGES IN THE FUTURE

Date of Application: _____

Permit Year: _____

Name: _____

Telephone Number: _____

Address: _____

Appendix C

Model Application for a Recreational Fire/Open Burning Permit

Date of Application: _____

Permit Number: _____

Fee Paid: \$ _____

Date of Expiration: _____

Applicant Information

Burn Site Location (If Different than Applicant's)

Applicant's Full Name: _____

Owner's Name: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

I AM REQUESTING PERMISSION TO CONDUCT AN OPEN BURN IN THE CITY OF _____. THE BURN WILL BE LOCATED _____ FEET FROM THE NEAREST OCCUPIED BUILDING, OTHER THAN MY OWN.

DESCRIBE IN DETAIL THE TYPE AND AMOUNT OF MATERIAL(S) THAT YOU WOULD LIKE TO BURN. THE MATERIAL MUST BE IN ACCORDANCE WITH THE ESTABLISHED GUIDELINES:

FIRE SAFETY AND AIR QUALITY REQUIREMENTS

I AGREE:

- To keep this fire under control and to assume responsibility for all damages and costs that may result from the fire under this permit.
- To attend to this fire until it is completely extinguished.
- Not to use this permit under any air quality alert.
- To extinguish the fire immediately if permit is revoked.
- To have permit available at the burn site for inspection.
- To have fire-extinguishing equipment (buckets, shovels, sand, garden hoses) available for use at fire location.
- To refrain from burning any prohibited materials, including, but not limited to: oils, rubber, plastics, tires, treated lumber, composite shingles, tar paper, insulation, composition board, sheet rock, wiring, paint, hazardous and industrial solid waste.
- That the authorized agent may revoke this permit at their discretion, should any of the following conditions exist:
 - 1) A fire hazard exists or develops during the course of the burn.
 - 2) A public safety hazard exists or may exist or may exist if the fire is implemented or allowed to occur.
 3. Any agree-upon conditions have been violated.

I, attest, by signature, that I have read and will comply with the fire safety and air quality requirements listed with this permit and with all other regulations and laws pertaining to open burning in the City of _____. I also attest that I am the landowner or have attached to this application the written permission of the landowner to burn at the above location.

I ACKNOWLEDGE THAT VIOLATIONS OF PERMIT CONDITIONS MAY SUBJECT ME TO CRIMINAL AND/OR CIVIL ACTIONS AND/OR REVOCATION OF RECREATIONAL FIRE PERMIT PRIVILEGES IN THE FUTURE.

Applicant's Signature

Date

THIS APPLICATION FOR OPEN BURNING CAN BE ACCOMPLISHED IN ACCORDANCE WITH THE CONDITIONS LISTED ON THIS FORM.

Approving Authority's Signature

Date