

ORDINANCE NO. 2023- 16

**AN ORDINANCE REGULATING OPEN BURNING
IN CASS COUNTY, INDIANA AND PROVIDING
PENALTIES FOR VIOLATIONS OF SUCH REGULATIONS**

WHEREAS, the burning of leaves and other residential trash has traditionally been tolerated as acceptable means of disposal;

BUT, in recent years public awareness has greatly increased with regard to the source of pollutants in our environment; and,

WHEREAS, it is quite evident that burning in general, including clean wood products, generates smoke which by its nature contains pollutants and contaminants to the environment that are harmful to human and animal life; and,

WHEREAS, said pollutants are a danger to the health, safety, and welfare of all the citizens of Cass County, Indiana; and,

WHEREAS, the health and safety factors far outweigh the traditional tolerance of burning as a means of trash disposal.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Cass County, Indiana that Ordinance No. 2023 is hereby adopted as follows:

1. Open burning is defined as the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the air, without passing through a stack or chimney from an enclosed chamber
2. No person shall start, kindle, cause, allow, or maintain any form of open burning of any materials on private or public property, except as specifically authorized by this ordinance. No person shall allow the accumulation or existence of combustible material that constitutes or contributes to open burning.
3. Exemptions: The following types of burning are allowed:
 - a. The burning of charcoal, clean untreated wood, and other cooking fuels customarily used in an outdoor grill, traditional food cooking devices, or campfires.
 - b. All burning permitted by 326 I.A.C. 4-1-3, including but not limited to fires permitted for agricultural burning purposes.

c. Fires used for recreational or ceremonial purposes such as school pep rally fires or the celebration of scout activities. Recreational or ceremonial shall meet the following conditions:

1. Only clean untreated wood or charcoal shall be used. Paper or petroleum products can be used for ignition purposes only.
2. The fire shall not be ignited more than 2 hours before the recreational activity is to take place and shall be extinguished upon the conclusion of the activity.
3. The pile to be burned shall be less than 1000 cubic feet (for example: 10ft. x 10ft. x 10ft.).
4. The local fire department shall be notified 24 hours in advance if the pile to be burned is more than 125 cubic feet (for example: 5ft. x 5ft. x 5ft.).
5. The fire shall not be for disposal purposes.
6. The fire shall not be within 500 feet of a pipeline or fuel storage area.

4. Variances. Other types of fires may be approved as follows:

Any other type of fire whereby a citizen of Cass County, Indiana has obtained a variance from the provisions of this ordinance by petitioning the Board of Commissioners may be allowed. However, the Board of Commissioners cannot grant a variance for burning that would otherwise violate the provisions of the 326 Indiana Administrative Code 4-1 et seq. and as amended and Indiana Code 13-17-9.

The following types of fires may be allowed if approved by the Indiana Department of Environmental Management:

- a. Fire fighter training
- b. Fire extinguisher training
- c. Vegetation propagation
- d. Use of an air curtain destructor
- e. Please refer to Attachment A for expanded version of variance situations based on 326 IAC 4-1-3(c)(3-8) and 326 IAC 4-1-4).

5. The following conditions apply to all exemptions and variances:

- a. Burning shall be done during safe weather conditions. Burning shall not occur, during high winds, temperature inversions, air stagnation, or when a pollution alert or ozone action day has been declared.
 - b. Fires must be attended at all times until completely extinguished.
 - c. Fires must be extinguished if they create a fire hazard, nuisance, pollution problem, or threat to public health.
 - d. Fire fighting equipment adequate for the size of the fire shall be on-site and nearby during times of burning.
 - e. Burning shall not be for disposal purposes.
 - f. All burning shall comply with other federal, state, and local laws, rules, and ordinances.
6. Enforcement: Any person found in violation of this ordinance shall be subject to the following procedures:
- a. The County/Municipal/Township/Fire Departments, the Cass County Sheriff, or *EMA Departments* shall issue a warning notice to a first-time violator stating that he or she is in violation. The person must then correct the violation by immediately extinguishing the fire. Failure or refusal to immediately extinguish the fire shall result in a citation being issued. A copy of any warning issued by a Fire Department or the EMA shall be submitted to the Sheriff's Department.
 - b. Issuance of a citation to the violator shall result in the imposition of a *Two hundred fifty* dollar fine (\$250.00) as administered by the Ordinance Violation Bureau pursuant to Ordinance No 2012-03.
 - c. Failure or refusal by the violator to immediately extinguish the fire in violation of this ordinance shall also result in the Fire Department having the authority to go upon private property to extinguish said fire.
 - d. Each subsequent starting, kindling, causing, or allowing of a new fire after a warning notice or citation has been issued, shall be considered a separate offense.
 - e. Liability for Fire: Any person who allows the accumulation or existence of combustible material which constitutes or contributes to open burning may not refute liability for violation of this ordinance on the basis that said fire was set by vandals, accidental, or act of God.
 - f. Citations shall be paid to the Clerk of Cass County, Indiana, who shall then remit one half (1/2) of the payment to the

jurisdictional fire department where the citation was issued and the other one-half (1/2) to Cass County.

7. The open burning provisions are enforceable by the duly appointed Cass County Sheriff's Department or law enforcement officers within Cass County, Indiana, acting on his/her own initiative or at the request of the *Board of Commissioners*.
8. This ordinance shall be in full force and effect from and after its passage by the Cass County Council, approval by the *Board of Commissioners* and legal publication.

PASSED AND ORDAINED by the Cass County Board of Commissioners this 4th day of December 2023.

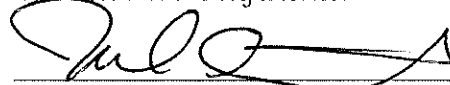
CASS COUNTY BOARD OF COMMISSIONERS:



Ruth Baker, President



Michael W. Stajduhar



Michael Deitrich

Attest:



Cheryl Alcorn, Auditor

Attachment A

- *Waste oil burning where waste oil originates from spillage during testing of an oil well and has been collected in a properly constructed and located burn off pit as prescribed in 310 IAC 7-1-37(a) in the Indiana Department of Natural Resources (DNR) rules, oil and gas operations. Burning shall be subject to the following conditions:
 - (A) Each oil pit may be burned once every two-(2) months.
 - (B) The fire must be extinguished within thirty (30) minutes of ignition.*
- *Indiana Department of Natural Resources (DNR) burning, to facilitate prescribed burning on DNR-controlled properties for wildlife habitat maintenance, forestry purposes, natural area management, and firefighting or prevention; United States Department of the Interior burning, to facilitate a National Park Service Fire Management Plan for the Indiana Dunes National Lakeshore, for example; and United States Department of Agriculture, Forest Service burning, to facilitate wildlife habitat maintenance, forestry purposes, natural area management, ecosystem management, and fire-fighting or prevention.*
- *Burning by the United States Forest Service for firefighting or prevention is not subject to the conditions in section 5.*
- *Burning of marijuana by federal, state, and local law enforcement offices. Only clean petroleum products shall be used for ignition purposes.*
- *Burning, for the purpose of heating, using clean wood products or paper in a noncombustible container that is sufficiently vented to induce adequate primary combustion, and has enclosed sides and a bottom. Burning shall be subject to the following conditions:
 - (A) Burning shall only occur between October 1 and May 15,
 - (B) Burning shall not be conducted for the purpose of disposal.*
- *Burning of vegetation by fire departments and firefighters to create fire breaks for purposes of extinguishing an existing fire. Such burning is not subject to the conditions in section 5.*
- *Burning of clean petroleum products for fire extinguisher training, subject the following conditions:
 - (A) The local fire department and health department must be notified at least twenty-four (24) hours in advance of the date, time, and location of the burning.
 - (B) All burning shall take place in a noncombustible container or enclosure, enclosed on all sides with a bottom.
 - (C) A total of no more than fourteen (14) gallons of fuel may be burned per day.
 - (D) Only one (1) fire may be allowed to burn at a time.
 - (E) All burning shall be conducted in such a manner so as to prevent any possibility of soil contamination.*
- *Emergency burning with prior oral approval of the Commissioner of the Indiana Department of Environmental Management or the Commissioner's designated agent may be authorized for the following:*

- (A) *Spilled or escaping liquid or gaseous petroleum products when all reasonable efforts to recover the spilled material have been made and failure to burn would result in an imminent fire or health hazard or air or water pollution problem; or*
- (B) *Clean wood waste, vegetation, or deceased animals resulting from a natural disaster where failure to burn would result in an imminent health or safety hazard.*