

## ORDINANCE # 136

### REGULATING OPEN BURNING AND OUTDOOR FURNACES

#### THE CITY COUNCIL OF THE CITY OF NICOLLET DOES ORDAIN:

##### Section 1. ADOPTION OF STATE LAW BY REFERENCE.

The provisions of *Minnesota Statutes*, Chapter 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 *Minnesota Statutes*, Chapter 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 *Minnesota Statutes*, Chapter 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 Nicollet, 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:

**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/CAMP FIRE.** A fire set with an approved starter fuel no more than three 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/CAMP FIRE SITE.** An area of no more than a three 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.

**STARTER FUELS.** Dry, untreated, 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, tire, railroad ties, treated, painted or glued wood composite shingles, tar paper, insulation, composition board, sheet rock, wiring, paint or paint fillers.

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

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

(E) The use of burners, as described in *Minnesota Statute* §88.16, subd. 2(d) are prohibited within the city's jurisdiction.

**Section 6. OPEN BURNING PROHIBITED.**

No person shall start or allow any open burning on any property in the city except as permitted as follows

**Section 7. PERMITTED OPEN BURNING.**

(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) Recreational/ camp fire as defined in Section 4

(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. TREES, BRANCHES, LEAVES, COMPOST DISPOSAL SITE.**

(A) The site designated as 201 Pine Street, North City Shop, back lot, will be the location for residents to dispose of trees, branches, leaves, and compost as an alternative to open burning.

- (1) The city maintenance crew will not pick up small piles of brush and limbs from the boulevards or from private properties.
- (2) Small batches of brush and limbs (a pickup truck load or less) to be chipped and disposed of should be delivered to the city maintenance lot and neatly piled in the designated area within the property owners own time schedule.
- (3) All limbs should be reduced to lengths not exceeding 6'.
- (4) No branches or limbs over 6" in diameter can be accommodated.
- (5) Absolutely no materials with roots attached should be delivered. Roots should be cut off and piled separately.
- (6) No garbage or demolition materials such as lumber, siding, plywood, sheet-rock, etc. will be accepted.
- (7) The city maintenance crew will chip the accumulated brush and limbs during the work week when schedule permits.
- (8) Large quantities to be chipped i.e. entire trees can be chipped at a private property. The city maintenance crew will need to be notified so that a schedule can be established. The property owner will provide adequate assistance.

(B) The City Council will monitor compliance. The City Council can discontinue all chipping and the city lot can be fenced if ordinance is not followed or budget constraints occur.

### **Section 9. BURNING BAN OR AIR QUALITY ALERT**

(A) 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 10. PENALTY.**

Violation of any provision of this ordinance, including maintaining a nuisance after being notified in writing, shall be a guilty of a misdemeanor.

### **Section 11. 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 12. Conditional use permit required for new outdoor furnaces.**

No outdoor furnace may be newly installed or used without a conditional use permit issued by the City. The permit shall specify that:

A. The furnace shall meet or exceed emission standards currently recommended by the U.S. Environmental Protection Agency (EPA) and shall be laboratory tested and listed to appropriate safety standards such as UL, CAN/CSA, ANSI or other applicable safety standards.

B. The furnace shall be constructed, established, installed, operated, and maintained in conformance with the manufacturer's instructions and the requirements of the conditional use permit. In the event of a conflict, the requirements of this ordinance shall apply unless the manufacturer's instructions are stricter, in which case the manufacturer's instructions shall apply.

C. The furnace shall have a setback of at least 25 feet from the property line. It shall be located on the property in compliance with manufacturer's requirements for clearance to combustible materials.

D. The furnace shall have a chimney high enough to minimize the likelihood that smoke will adversely affect building occupants or neighbors. The chimney shall extend at least two feet above the peak of the building it serves or at least two feet above the peak of any building that is within 100 feet of the furnace, whichever is greater.

E. The outdoor furnace shall burn only clean dry natural wood, wood pellets, corn products, biomass pellets, or other fuels specifically permitted by the manufacturer's instructions, such as fuel oil, natural gas, or propane backup.

F. Corn or pelletized fuel shall at all times be stored in securely-covered bins or enclosures so as to prevent the attraction of rodents or other vermin.

G. Additional requirements may be imposed as appropriate for the location and circumstances.

### **Section 13. Existing outdoor furnaces.**

A. Existing outdoor furnaces may be used without a conditional use permit only if constructed, established, installed, operated, and maintained in conformance with the manufacturer's instructions.

- B. Existing outdoor furnaces shall burn only clean dry natural wood, wood pellets, corn products, biomass pellets, or other fuels specifically permitted by the manufacturer's instructions, such as fuel oil, natural gas, or propane backup.
- C. Corn or pelletized fuel shall at all times be stored in securely-covered bins or enclosures so as to prevent the attraction of rodents or other vermin.
- D. Any modification or replacement of an existing outdoor furnace requires a conditional use permit as in Subdivision 3 above.

**Section 14. Penalties.**

Failure to adhere to the requirements of this Part or to the requirements of a permit or conditional use permit authorized under this section is hereby declared to be a misdemeanor, and the owner or operator of the open fire or outdoor furnace may be subject to one or more of the following penalties:

- A. Criminal prosecution. Each infraction may be deemed to constitute a separate violation.
- B. Cease-and-desist order issued by the City of Nicollet or its agent. The order shall require the owner or operator to discontinue use of the outdoor furnace until the infraction is eliminated and the cease-and-desist order is withdrawn. Each incident or violation of a cease-and-desist order is a misdemeanor.
- C. Revocation of conditional use permit.

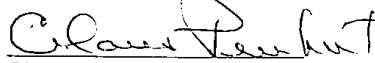
That this ordinance shall take effect and shall be in force 30 days from and after its adoption and publication.

Adopted by the City Council of the City of Nicollet this 14<sup>th</sup> day of May, 2008.

APPROVED:

  
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Mike Mans, Mayor

ATTEST:

  
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Claus Peukert, City Clerk

(CITY SEAL)