

ORDINANCE NO. 2009-08

AN ORDINANCE AMENDING CHAPTER 8 OF THE PERRY MUNICIPAL CODE 2004 (2ND BIANNUAL SUPPLEMENT), BY THE AMENDMENT OF SECTION 8-109 CONCERNING "OPEN BURNING"; PROVIDING FOR THE REGULATION OF OPEN BURNINGS AND COMPLIANCE WITH NEW STATE LAW IN AGRICULTURAL DISTRICTS; PROVIDING FOR SAVINGS; SEVERABILITY; REPEALER; CODIFICATION; PENALTY; AND DECLARING AN EMERGENCY.

EMERGENCY ORDINANCE

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PERRY:

Section I: Section 8-109 of Chapter 8 of the Perry Municipal Code 2004 (2nd Biannual Supplement) is hereby amended to read as follows:

Section 8-109 ~~BURNING REFUSE~~ OPEN BURNING.

A. Definitions. For purpose of this section, the following definitions shall have the following meanings:

1. Combustible materials: Any substance that will readily burn.
2. Domestic refuse. Any refuse produced during normal daily household operations.
3. Open Burning. The burning of any materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. For the purpose of this definition, a chamber shall be regarded as enclosed when, during the time combustion occurs, only apertures, ducts, stacks, flue or chimneys necessary to provide combustion air and permit the escape of exhaust gas are open.

B. Allowable Open Burning. Open Burning will be allowable for the following reasons and/or purposes:

1. Recreational Fires.
 - a. Camp fires, bon fires, ceremonial occasions or

non-commercial preparation of food subject to terms of this section.

- b. All bon fires and camp fires require a permit and shall not be more than 5 feet by 5 feet in dimension and shall burn for less than three (3) hours. A bon fire or camp fire shall consist of seasoned dry wood. No gasoline or other liquid hydrocarbon shall be used for ignition. Bon fires and camp fires are not permitted in residentially zoned districts. Bon fires and camp fires are permitted at CCC Lake/Park and Perry Lake/Park if a permit has been secured.
- c. Barbecue grills or other wood burning grills are allowed at city parks if a permit is secured. This permit requirement does not apply to permanently affixed grills on City property. All such fires shall be attended at all times by at least one individual, until the fire is completely extinguished.
- d. Fires used for food preparation purposes on private property, fueled by wood, charcoal and gas and confined within a metal or masonry appliance designed for such use are allowed without a permit provided: 1) the fires are supervised, 2) the size of the fire does not present a fire spread danger, and 3) the fires are being used expressly for the preparation of food. Food preparation fires are not permitted on the ground, unless the containment is approved by the Fire Chief or his designee.
- e. Barbecuing on combustible decks or balconies at multistory apartment complexes is not allowed unless non-combustible surfaces are in place to prevent embers or ashes from contacting combustible materials. Non-combustible surfaces are to be above, below and adjacent to the site.

2. Agriculturally zoned property. Owners of agriculturally zoned property may burn debris originating on their property following a flood or other natural disaster,

after securing a permit and subject to the regulations contained herein and state and federal laws regulating burning.

C. Prohibited Open Burning. Open burning for the following reasons are prohibited:

1. Burning of domestic refuse.
2. Burning of debris, construction/demolition material, or materials other than wood and vegetation on agriculturally zoned districts following a flood or other natural disaster.

D. General conditions and requirements for all open burning:

1. No public nuisance will be created.
2. The burning is controlled so that a traffic hazard is not created as a result of the air contaminants being emitted.

3. The burning is conducted so that ambient air quality of the general area as well as the surrounding city is not adversely affected.

4. Any open burning shall be constantly attended until the fire is extinguished. At least one portable fire extinguisher with a minimum 4-A rating, two portable fire extinguishers with a minimum 2-A rating each, or other approved on-site fire extinguishing equipment, such as dirt, sand, water barrel, garden hose or water truck, shall be available for immediate utilization.

5. The minimum distance for open burning from oil and gas wells shall be one thousand feet (1000'), unless a risk analysis is performed and approved by the oil and gas lease holder and the Fire Chief's Office. The risk analysis shall be presented in written form for review to the oil and gas lease holder and the Fire Chief's Office. If the risk analysis states that a minimum hazard exists the minimum distance can be reduced to 500 feet. The risk analysis should state any requirements on the burning or site conditions for the burn permit holder. The risk analysis shall be conducted by a qualified company or person(s) and be approved in writing by a company representative for the oil well site affected. The risk analysis may be performed by the following person(s):

- a. Field operations and safety coordinator for the oil company affected, if trained in fire behavior/prevention.
- b. A person trained and certified by a nationally recognized independent organization accredited in fire behavior/prevention.
- c. A private fire protection engineer.
- d. A person trained in hazardous materials operations.

6. Distances from any electric and overhead utilities shall be a minimum of 150 feet.

7. Distances from any public roadway must be at least 300 feet. Permission to burn shall be obtained each day before burning is to take place. To receive permission to burn on any given day, between the hours of 8:00 a.m. and sunset, the applicant must contact the Fire Chief's Office prior to commencing the burning. If burning is to take place between sunrise and 8:00 a.m., the permit holder must contact the Fire Chief's Office the day before, during office hours, to receive permission for the following morning.

8. The Fire Department shall order the extinguishment of any open burning that creates or adds to a hazardous or objectionable situation. Permit holders are required to extinguish the fire upon the order of the Fire Department. Failure of a permit holder to extinguish a fire shall be an offense and will result in the Fire Department extinguishing the fire.

9. Wind speed must be less than ten (10) miles per hour and the ceiling has to be a minimum of a 4, or 1000 to 3000 feet, as indicated by the National Weather Service. No open burning, subject to a permit, shall be permitted during any local or state burn ban.

10. The burn permit site and the materials to be burned are subject to inspection at any time during the thirty (30) day permit period by any officer of the Perry Fire Department.

E. Permits Required. The following burning activities require a permit from the Fire Chief's Office:

1. Bon Fires
2. Camp Fires
3. Ceremonial Fires
4. Open burning on agriculturally zoned property following a flood or other natural disaster.

F. Permit Fees. The fee for permits shall be:

1. Bon Fires - \$25.00 (no fee if camping permit is acquired).
2. Camp Fires - \$25.00 (no fee if camping permit is acquired).
3. Ceremonial Fires - \$25.00
4. Open burning on agriculturally zoned property following a flood or other natural disaster - \$25.00

G. Acquiring a Permit.

1. A permit must be obtained from the Office of the Fire Chief.

2. Applications for permits shall be submitted to the Fire Chief's Office a minimum of one week prior to the date of burning, during regular business hours.

3. All permits shall be requested by and issued to the owner, or agent of the owner, of the land upon which the open burning is to take place. Individuals representing themselves as an "agent of the owner" shall provide sufficient documentation of agency.

4. Permits shall be for a period of 30 days. However, the Fire Chief may extend the period for an additional 30 days, if in the opinion of the Fire Chief there was not an adequate number of days to accomplish the burning for which the permit was issued.

H. Burn Permit Revocation. The Perry Fire Department shall have the authority to revoke any burn permit at any time due to weather conditions, excessive and justifiable complaints, non-compliance with this section or other state or federal laws, and any time it is deemed in the best interest of the City of Perry. Permit fees will be returned in cases where the revocation is based on conditions outside of the control of the owner or agent of the owner.

I. Penalty. It shall be an offense for any person, firm, corporation or other entity to violate the terms of this section, by either action or omission.

~~A. It is unlawful to burn any trash or refuse or any type of material within the city.~~

~~B. It is unlawful for any person to burn trash, waste paper, rubbish or refuse except under a permit issued by or in receptacles and conditions approved by the State Health Department or U.S. Environmental Protection Agency.~~

Section II. REPEALER. All ordinances or parts thereof which are inconsistent with this ordinance are hereby repealed.

Section III. SAVINGS CLAUSE. Nothing in this ordinance hereby adopted shall be construed to affect any suit or proceeding now pending in any court, or any rights acquired or liability incurred nor any cause or causes of action accrued or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired or affected by this ordinance.

Section IV. CODIFICATION. This ordinance shall be codified as shown in Chapter 8 of the Perry Municipal Code 2004 (2ND Biannual Supplement).

Section V. SEVERABILITY. If any one or more of the sections, sentences, clauses or parts of this ordinance, chapter or section shall for any reason be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of this ordinance. It is hereby declared to be the intention of the Mayor and City Council of the City of Perry that this section of the Perry Municipal Code would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

Section VI. PENALTY. Any person who shall violate the provisions of this section shall be deemed guilty of an offense against the City and upon conviction thereof shall be punished with fine of Two Hundred Dollars (\$200.00), and court costs and statutory penalties and assessments.

Section VII. EMERGENCY. In order to protect the health, safety and welfare of the general public of the City of Perry, Oklahoma, and in order to comply with state law and provide proper procedures and regulations concerning open burning; therefore, this ordinance shall become effective from and after its date of publication.

Approved and executed this 18th day of May 2009.

THE CITY OF PERRY, OKLAHOMA

Chuck Hall, Mayor

(Seal)
ATTEST:

Kyla Golay, City Clerk

Approved as to Form:

Jim Davis, City Manager

Approved as to Legality:

Bryce S. Kennedy, Jr., City Attorney

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