

ORDINANCE NO. 164-1999

**TITLE: AMENDING SECTION 660.20 - BARBERTON
CODIFIED ORDINANCES**

**AN ORDINANCE AMENDING SECTION 660.20 OF THE BARBERTON
CODIFIED ORDINANCES ENTITLED "OPEN BURNING", AND DECLARING AN
EMERGENCY.**

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Barberton,
State of Ohio:

SECTION 1. That Council hereby amends Section 660.20 of the Barberton Codified
Ordinances entitled "Open Burning" which now reads as follows:

660.20 OPEN BURNING.

(a) Definitions. As used in this section:

- (1) "Agricultural waste" means any matter generated by crop, horticultural or livestock production practices, and includes such items as bags, cartons, structural materials and landscape wastes that are generated in agricultural activities, but does not include land clearing waste, buildings, garbage, dead animals, motor vehicles and parts thereof, nor economic poisons and containers therefor, unless the manufacturer has identified open burning as a safe disposal procedure.
- (2) "Economic poisons" means, but is not restricted to, pesticides such as insecticides, fungicides, rodenticides, miticides, nematocides and fumigants, herbicides, seed disinfectants and defoliantes.
- (3) "Garbage" means any matter resulting from the handling, processing, preparation, cooking and consumption of food or food products.
- (4) "Land clearing waste" means plant matter which is removed from land, including plant matter removed from stream banks during projects involving more than one property owner, for the purpose of rendering the land useful for residential, commercial or industrial development.
- (5) "Landscape waste" means any plant matter, except garbage, including trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery, yard trimmings and crop residues.
- (6) "Ohio EPA" means the Ohio Environmental Protection Agency Director, or agencies delegated authority by the Director of the Ohio Environmental Protection Agency pursuant to Ohio R.C. 3704.03, or the chief of any Ohio Environmental Protection Agency district office.

- (7) "Open burning" means the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney. Open burning includes the burning of any refuse or salvageable material in any device not subject to or designed specifically to comply with the requirements of Rule 3745-17-09 or 3745-17-10 of the Ohio Administrative Code.
 - (8) "Residential waste" means any matter, including landscape wastes, generated on a one, two or three-family residence as a result of residential activities, but not including garbage.
 - (9) "Restricted area" means the area within the boundaries of any municipal corporation established in accordance with the provisions of Title 7 of the Ohio Revised Code, plus a zone extending 1,000 feet beyond the boundaries of any such municipal corporation having a population of 1,000 to 10,000 persons and a zone extending one mile beyond any such municipal corporation having a population of 10,000 persons or more according to the latest Federal census.
 - (10) "Unrestricted area" means all areas outside the boundaries of a restricted area as defined in paragraph (a) (9) hereof.
- (OAC 3745-19-01)

(b) Relation to Other Laws

- (1) Notwithstanding any provision of this section or of Chapter 3745-19 of the Ohio Administrative Code, no open burning shall be conducted in an area where an air alert, warning or emergency under Chapter 3745-25 of the Ohio Administrative Code is in effect.
 - (2) No provision of this section or of Chapter 3745-19 of the Ohio Administrative Code, permitting open burning, and no permission to open burn granted by the Fire Division or by the Ohio EPA, shall exempt any person from compliance with any section of the Ohio Revised Code, or any regulation of any State department, or any local ordinance or regulation, dealing with open burning.
- (OAC 3745-19-02)

(c) Open Burning in Restricted Areas.

- (1) No property owner or other person shall cause or allow open burning in a restricted area except as provided in paragraphs (c) (2) to (4) hereof or in Ohio R.C. 3704.11.
- (2) Open burning shall be allowed for the following purposes without notification to or permission from the Fire Division or from the Ohio EPA:
 - A. Cooking for human consumption.
 - B. Heating tar, welding, acetylene torches, highway safety flares, heating for warmth of outdoor workers and strikers, smudge pots and similar occupational needs. Fires allowed by paragraphs (c) (2) A. and B. hereof shall not be used for waste disposal purposes and shall be the minimum size sufficient for their intended purpose. The fuel shall be chosen to minimize the generation and emission of air contaminants.

- (3) Open burning shall be allowed for the following purposes with prior notification to the Fire Division or to the Ohio EPA:
 - A. Prevention or control of disease or pests, with written or verbal verification to the Fire Division or to the Ohio EPA from the local health department, the Cooperative Extension Service, the Ohio Department of Agriculture or the U.S. Department of Agriculture, that open burning is the only appropriate disposal method.
 - B. Ceremonial fires provided that all of the following conditions are met:
 - 1. The ceremonial fires shall be less than five feet by five feet in dimension and shall burn no longer than three hours.
 - 2. The ceremonial fires shall not be used for waste disposal purposes.
 - 3. The fuel shall be chosen so as to minimize the generation and emission of air contaminants.
 - (4) Open burning shall be allowed for the following purposes upon receipt of written permission from the Fire Division or from the Ohio EPA, provided that any conditions specified in the permission are followed:
 - A. Disposal of ignitable or explosive materials where the Fire Division or the Ohio EPA determines that there is no practical alternative method of disposal;
 - B. Instruction in methods of fire-fighting or for research in the control of fires;
 - C. In emergency or other extraordinary circumstances for any purpose determined to be necessary by the Fire Division or the Ohio EPA; and
 - D. Recognized horticultural, silvicultural, range or wildlife management practices.
- (OAC 3745-19-03)

(d) Open Burning in Unrestricted Areas.

- (1) No property owner or other person shall cause or allow open burning in an unrestricted area except as provided in paragraphs (d) (2) to (4) hereof or in Ohio R.C. 3704.11.
- (2) Open burning shall be allowed for the following purposes without notification to or permission from the Fire Division or the Ohio EPA.
 - A. Cooking for human consumption;
 - B. Heating tar, welding, acetylene torches, highway safety flares, heating for warmth of outdoor workers and strikers, smudge pots and similar occupational needs. Fires allowed by paragraphs (d) (2) A. and B. hereof shall not be used for waste disposal purposes and shall be the minimum size sufficient for their intended purpose. The fuel shall be chosen to minimize the generation and emission of air contaminants.
 - C. Disposal of residential waste or agricultural waste generated on the premises if all of the following conditions are observed:
 - 1. The fire is set only when atmospheric conditions will readily dissipate contaminants.
 - 2. The fire does not create a visibility hazard on roadways, railroad tracks or airfields.

3. The fire is located at a point on the premises no less than 1,000 feet from any inhabited building not located on said premises.
 4. The wastes are stacked and dried to provide the best practicable condition for efficient burning.
 5. No materials are burned which contain rubber, grease, asphalt or liquid petroleum products.
- D. Ceremonial purposes, if all of the following conditions are met:
1. The ceremonial fires shall be less than five feet by five feet in dimensions and shall burn no longer than three hours.
 2. The ceremonial fires shall not be used for waste disposal purposes.
 3. The fuel shall be chosen so as to minimize the generation and emission of air contaminants.
- (3) Open burning shall be allowed for the following purposes upon receipts of written permission from the Fire Division or the Ohio EPA, provided that any conditions specified in the permission are followed:
- A. Disposal of ignitable or explosive materials where the Fire Division or the Ohio EPA determines that there is no practical alternative method of disposal;
 - B. Instruction in methods of fire-fighting or for research in the control of fire;
 - C. In emergency or other extraordinary circumstances for any purpose determined to be necessary by the Fire Division or the Ohio EPA;
 - D. Disposal of land clearing waste if all of the following conditions are observed:
 1. The fire is set only when atmospheric conditions will readily dissipate contaminants.
 2. The fire does not create a visibility hazard on roadways, railroad tracks or airfields.
 3. The fire is located at a point on the premises no less than 1,000 feet from any inhabited building not located on said premises.
 4. An air curtain destructor, or another device or method determined by the Director of the Ohio EPA to be at least as effective, is used to curtail release of air contaminants.
 - E. Recognized horticultural, silvicultural, range or wildlife management practices.
- (4) Open burning shall be allowed for the prevention or control of disease or pests, with written or verbal verification to the Fire Division or the Ohio EPA from the local health department, the Cooperative Extension Service, the Ohio Department of Agriculture or the U.S. Department of Agriculture, that open burning is the only appropriate disposal method.

(OAC 3745-19-04)

(e) Permission to Individuals and Notification to the Fire Division or the Ohio EPA.

(1) Permission.

- A. An application for permission to open burn shall be submitted in writing at least ten days before the fire is to be set. It shall be in such form and contain such information as required by the Fire Division or the Ohio EPA.
- B. Such applications shall contain, at a minimum, information regarding:
 - 1. The purpose of the proposed burning;
 - 2. The nature and quantities of material to be burned;
 - 3. The date or dates when such burning will take place;
 - 4. The location of the burning site, including a map showing distances to residences, populated areas, roadways, airfields and other pertinent landmarks;
 - 5. The methods or actions which will be taken to reduce the emissions of air contaminants.
- C. Permission to open burn shall not be granted unless the applicant demonstrates to the satisfaction of the Fire Division or the Ohio EPA that open burning is necessary to the public interest; will be conducted in a time, place and manner as to minimize the emission of air contaminants; and will have no serious detrimental effect upon adjacent properties or the occupants thereof. The Fire Division or the Ohio EPA may impose such conditions as may be necessary to accomplish the purpose of this section and of Chapter 3745-19 of the Ohio Administrative Code.
- D. Permission to open burn must be obtained for each specific project. In emergencies where public health or environmental quality will be seriously threatened by delay while written permission is sought, the fire may be set with the oral permission of the Fire Division or the Ohio EPA.
- E. Violations of any of the conditions set forth by the Fire Division or the Ohio EPA in granting permission to open burn shall be grounds for revocation of such permission and refusal to grant future permission as well as for the imposition of other sanctions provided by law.

(2) Notification.

- A. Notification shall be submitted in writing at least ten days before the fire is to be set. It shall be in such form and contain such information as shall be required by the Fire Division or the Ohio EPA.
- B. Such notification shall inform the Fire Division or the Ohio EPA regarding:
 - 1. The purpose of the proposed burning;
 - 2. The nature and quantities of materials to be burned;
 - 3. The date or dates when such burning will take place
 - 4. The location of the burning site.
- C. The Fire Division or the Ohio EPA, after receiving notification may determine that the open burning is not allowed under this section or under Chapter 3745-19 of the Ohio Administrative Code and the fire Division or the Ohio EPA shall notify the applicant to this effect.

(OAC 3745-19-05)

(f) Penalty. Whoever violates any of the provisions of this section is guilty of a minor misdemeanor and shall be subject to the penalty provided in Section 698.02 for each offense. A separate offense shall be deemed committed each day during on which a violation occurs or continues. In addition, the offender shall be required to pay the cost of proper disposal of the materials burned. The cost of proper disposal of the materials burned shall be the amount it would have cost to dispose of the materials in a manner that is consistent with the air, water and solid waste law, ordinances and regulations of the Municipality and the State.

be and the same is hereby amended to read as follows:

660.20 OPEN BURNING.

(a) Definitions. As used in this section:

- (1) "Agricultural waste" means any matter generated by crop, horticultural or livestock production practices, and includes such items as bags, cartons, structural materials and landscape wastes that are generated in agricultural activities, but does not include land clearing waste, buildings, garbage, dead animals, motor vehicles and parts thereof, nor economic poisons and containers therefor, unless the manufacturer has identified open burning as a safe disposal procedure.
- (2) "Economic poisons" means, but is not restricted to, pesticides such as insecticides, fungicides, rodenticides, miticides, nematocides and fumigants, herbicides, seed disinfectants and defoliant.
- (3) "Garbage" means any matter resulting from the handling, processing, preparation, cooking and consumption of food or food products.
- (4) "Land clearing waste" means plant matter which is removed from land, including plant matter removed from stream banks during projects involving more than one property owner, for the purpose of rendering the land useful for residential, commercial or industrial development.
- (5) "Landscape waste" means any plant matter, except garbage, including trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery, yard trimmings and crop residues.
- (6) "Open burning" means the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney. Open burning includes the burning of any refuse or salvageable material in any device not subject to or designed specifically to comply with the requirements of Rule 3745-17-09 or 3745-17-10 of the Ohio Administrative Code.
- (7) "Residential waste" means any matter, including landscape wastes, generated on a one, two or three-family residence as a result of residential activities, but not including garbage.

(OAC 3745-19-01)

(b) Relation to Other Laws

- (1) Notwithstanding any provision of this section or of Chapter 3745-19 of the Ohio Administrative Code, no open burning shall be conducted in an area where an air alert, warning or emergency under Chapter 3745-25 of the Ohio Administrative Code is in effect.
- (2) No provision of this section or of Chapter 3745-19 of the Ohio Administrative Code, permitting open burning, and no permission to open burn granted by the Fire Division shall exempt any person from compliance with any section of the Ohio Revised Code, or any regulation of any State department, or any local ordinance or regulation, dealing with open burning.

(OAC 3745-19-02)

(c) Open Burning Within the City Limits.

- (1) No property owner or other person shall cause or allow open burning within the City limits except as provided in paragraphs (c) (2) to (4) hereof or in Ohio R.C. 3704.11.
- (2) Open burning shall be allowed for the following purposes without notification to or permission from the Fire Division:
 - A. Cooking for human consumption.
 1. **For a maximum of three hours per day, from 10:00 A.M. until 11:00 P.M.**
 2. **The fire shall be no larger than 3 feet by 3 feet, measured at the base.**
 3. **The fire must not be smoldering.**
 4. **Clean and dried felled wood must be used –no trash.**
 5. **Fire to be located at least 20 feet from any structure.**
 6. **If a larger fire is needed, or a fire is needed for a longer duration, a permit must be obtained from the Barberton Fire Marshall.**
 7. **If, at the discretion of the officer in charge from the unit responding to a complaint determines that a fire is unsafe or a nuisance, it shall be immediately extinguished.**

(Ord. No. 164-1999.)

- B. Heating tar, welding, acetylene torches, highway safety flares, heating for warmth of outdoor workers and strikers, smudge pots and similar occupational needs. Fires allowed by paragraphs (c) (2) A. and B. hereof shall not be used for waste disposal purposes and shall be the minimum size sufficient for their intended purpose. The fuel shall be chosen to minimize the generation and emission of air contaminants.
- (3) Open burning shall be allowed for the following purposes with prior notification to the Fire Division:
 - A. Prevention or control of disease or pests, with written or verbal verification to the Fire Division from the local health department, the Cooperative Extension Service, the Ohio Department of Agriculture or the U.S. Department of Agriculture, that open burning is the only appropriate disposal method.

- B. Ceremonial fires provided that all of the following conditions are met:
 - 1. The ceremonial fires shall be less than five feet by five feet in dimension and shall burn no longer than three hours.
 - 2. The ceremonial fires shall not be used for waste disposal purposes.
 - 3. The fuel shall be chosen so as to minimize the generation and emission of air contaminants.
 - (4) Open burning shall be allowed for the following purposes upon receipt of written permission from the Fire Division, provided that any conditions specified in the permission are followed:
 - A. Disposal of ignitable or explosive materials where the Fire Division determines that there is no practical alternative method of disposal;
 - B. Instruction in methods of fire-fighting or for research in the control of fires;
 - C. In emergency or other extraordinary circumstances for any purpose determined to be necessary by the Fire Division; and
 - D. Recognized horticultural, silvicultural, range or wildlife management practices.
- (OAC 3745-19-03)

(d) Permission to Individuals and Notification to the Fire Division.

(1) Permission.

- A. An application for permission to open burn shall be submitted in writing at least ten days before the fire is to be set. It shall be in such form and contain such information as required by the Fire Division.
- B. Such applications shall contain, at a minimum, information regarding:
 - 1. The purpose of the proposed burning;
 - 2. The nature and quantities of material to be burned;
 - 3. The date or dates when such burning will take place;
 - 4. The location of the burning site, including a map showing distances to residences, populated areas, roadways, airfields and other pertinent landmarks;
 - 5. The methods or actions which will be taken to reduce the emissions of air contaminants.
- C. Permission to open burn shall not be granted unless the applicant demonstrates to the satisfaction of the Fire Division that open burning is necessary to the public interest; will be conducted in a time, place and manner as to minimize the emission of air contaminants; and will have no serious detrimental effect upon adjacent properties or the occupants thereof. The Fire Division may impose such conditions as may be necessary to accomplish the purpose of this section and of Chapter 3745-19 of the Ohio Administrative Code.
- D. Permission to open burn must be obtained for each specific project. In emergencies where public health or environmental quality will be seriously threatened by delay while written permission is sought, the fire may be set with the oral permission of the Fire Division.

E. Violations of any of the conditions set forth by the Fire Division in granting permission to open burn shall be grounds for revocation of such permission and refusal to grant future permission as well as for the imposition of other sanctions provided by law.

(2) Notification.

A. Notification shall be submitted in writing at least ten days before the fire is to be set. It shall be in such form and contain such information as shall be required by the Fire Division.

B. Such notification shall inform the Fire Division regarding:

1. The purpose of the proposed burning;
2. The nature and quantities of materials to be burned;
3. The date or dates when such burning will take place
4. The location of the burning site.

C. The Fire Division, after receiving notification may determine that the open burning is not allowed under this section or under Chapter 3745-19 of the Ohio Administrative Code and the Fire Division shall notify the applicant to this effect.

(OAC 3745-19-05)

(e) Penalty. Whoever violates any of the provisions of this section is guilty of a minor misdemeanor and shall be subject to the penalty provided in Section 698.02 for each offense. A separate offense shall be deemed committed each day during on which a violation occurs or continues. In addition, the offender shall be required to pay the cost of proper disposal of the materials burned. The cost of proper disposal of the materials burned shall be the amount it would have cost to dispose of the materials in a manner that is consistent with the air, water and solid waste law, ordinances and regulations of the Municipality and the State.

(Amended Ord. No. 164-1999. Passed 7-12-99.)

SECTION 2. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were meetings open to the public in compliance with the law.

SECTION 3. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, convenience and welfare of the City of Barberton and the inhabitants thereof, for the reason that this amendment clarifies the Open Burning restrictions within the City limits, and provided it receives the approval of two-thirds of the members of Council, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Passed _____ 1999

Clerk of Council

President of Council

Approved _____ 1999

Mayor