Ordinance No. 0820191 2018/2019

# AN ORDINANCE REPEALING AND RECREATING SECTION 5.05 REGULATING OPEN BURNING

**WHEREAS**, the Town Board and the Town of Sheboygan Volunteer Fire Department has determined that it is in the best interest of public safety and welfare to update the regulations on open burning in the Town of Sheboygan; and

**WHEREAS**, to promote the public health, safety and welfare and to safeguard the health, comfort, living conditions, safety and welfare of the citizens of the Town of Sheboygan, Sheboygan County, Wisconsin due to air pollution and fire hazards of open burning, outdoor burning and refuse burning.

**NOW, THEREFORE,** the Town Board of the Town of Sheboygan does ordain as follows:

**Section 1.** **Repealing Code.** Section 5.05 of the Ordinances of the Town of Sheboygan, entitled Open Burning Regulations, is hereby repealed.

**Section 2.** **Recreating Code.** Section 5.05 entitled Open Burning Regulations is hereby adopted, enacted and recreated to read as follows:

"**5.05 Open Burning Regulations**

(1) Applicability. This ordinance applies to all outdoor burning and refuse burning with the Town of Sheboygan.

(a) This ordinance does not apply to grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances.

(b) This ordinance does not apply to burning in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation unless the material being burned includes refuse as defined in Section (2) of this ordinance.

(c) This ordinance does not apply to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.

(2) Definitions.

(a) "Campfire" means a small outdoor fire intended for recreation or cooking not including a fire intended for disposal of waste wood or refuse.

(b) "Clean Wood" means natural wood which has not been painted, varnished or coated with similar material, has not been pressure treated with preservatives and does not contain resins or glues as in plywood or other composite wood products.

(c) "Confidential papers" means printed material containing personal identification or financial information that the owner wishes to destroy.

(d) "Fire Chief" means the Chief of the Town of Sheboygan Volunteer Fire Department or other person authorized by the Fire Chief.

(e) "Outdoor Burning" means open burning or burning in an outdoor wood-fired furnace.

(f) "Open Burning" means kindling or maintaining a fire where the products of combustion are emitted directly into the ambient air without passing through a stack or a chimney from an enclosed chimney.

(g) Outdoor Wood-fired Furnace" means a wood-fired furnace, stove or boiler that is not located within a building intended for habitation by humans or domestic animals.

(h) "Refuse" means any waste material except clean wood.

(3) General Prohibition on Open Burning, Outdoor Burning and Refuse Burning. Open burning, outdoor burning and refuse burning are prohibited in the Town of Sheboygan unless the burning is specifically permitted by this ordinance.

(4) Materials That May Not Be Burned.

(a) Unless a specific written approval has been obtained from the Department of Natural Resources, the following materials may not be burned in an open fire, incinerator, burn barrel, furnace, stove or any other indoor or outdoor incineration or heating device. The Town of Sheboygan will not issue a permit for burning any of the following materials without air pollution control devices and a written copy of an approval by the Department of Natural Resources.

(b) Rubbish or garbage including but not limited to food wastes, food wraps, packaging, animal carcasses, paint or painted materials, furniture, composite shingles, construction or demolition debris or other household or business wastes.

(c) Waste oil or other oily wastes except used oil burned in a heating device for energy recovery subject to the restrictions in Wis. Admin. Code Chapter NR 590.

(d) Asphalt and products containing asphalt.

(e) Treated or painted wood including but not limited to plywood, composite wood products or other wood products that are painted, varnished or treated with preservatives.

(f) Any plastic material including but not limited to nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fibers, films and containers.

(g) Rubber including tires and synthetic rubber-like products.

(h) Newspaper, corrugated cardboard, container board, office paper and other materials that must be recycled in accordance with the recycling ordinance except as provided in Section (9) of this ordinance.

(5) Open Burning of Leaves, Brush, Clean Wood and Other Vegetative Debris. Open burning of leaves, weeds, brush, stumps, clean wood and other vegetative debris is allowed only in accordance with the following provisions:

(a) All allowed open burning shall be conducted in a safe, nuisance free manner, when wind and weather conditions are such as to minimize adverse effects and not create a health hazard or a visibility hazard on roadways, railroads or airfields. Open burning shall be conducted in conformance with all local and state fire protection regulations.

(b) Except for barbecue, gas and charcoal grills, no open burning shall be undertaken during periods when either the Fire Chief or the Wisconsin Department of Natural resources has issued a burning ban applicable to the area.

(c) Open burning shall be conducted only on the property on which the materials were generated or at a facility approved by and in accordance with provisions established by the Department of Natural Resources and the Fire Chief.

(d) Unless explicitly allowed elsewhere in this ordinance, a commercial enterprise other than an agricultural or silvicultural operation may open burn only at a facility approved by and in accordance with provisions established by the Department of Natural Resources and the Fire Chief.

(e) Open burning of weeds or brush on agricultural lands is allowed if conducted in accordance with other applicable provisions of this ordinance.

(f) Fires set for forest or wildlife habitat management are allowed with the approval of the Department of Natural Resources.

(g) Outdoor campfires and small bonfires for cooking, ceremonies or recreation are allowed provided that the fire is confined by a control device or structure such as a barrel, fire ring, or fire pit.

(h) Burning of trees, limbs, stumps, brush or weeds for clearing or maintenance of rights-of-way is allowed if approved by the Fire Chief and if in accordance with other provisions of this ordinance.

(i) Burning in emergency situations such as natural disasters is allowed if approved by the Department of Natural Resources.

(j) Except for campfires, open burning under this section shall only be conducted at a location at least 250 feet from the nearest building that is not on the same property.

(k) Except for campfires and permitted bonfires, open burning shall only be conducted from the hours of 4:00 p.m. and 9:00 p.m.

(l) Open burning shall be constantly attended and supervised by a competent person of at least eighteen (18) years of age until the fire is extinguished and is cold. The person shall have readily available for use such fire extinguishing equipment as may be necessary for the total control of the fire.

(m) No materials may be burned upon any street, curb, gutter or sidewalk or on the ice of a lake, pond, stream or waterbody.

(n) Except for barbecue, gas and charcoal grills, no burning shall be undertaken within 25 feet from any combustible material, combustible wall or partition, exterior window opening, exit access or exit unless authorized by the Fire Chief.

(6) Burn Barrels. A burn barrel may be used in the Town of Sheboygan only in accordance with the following provisions:

(a) The burn barrel shall not be used to burn any of the prohibited materials listed in Section (5) of this ordinance.

(b) The burn barrel shall be located at least 250 feet from the nearest building that is not on the same property as the burn barrel.

(c) The burn barrel shall have vent holes above the ash line for combustion air and shall be covered with a heavy wire screen.

(d) The burn barrel shall not serve a business.

(7) Outdoor Wood-Fired Furnaces. An outdoor wood-fired furnace may be used in the Town of Sheboygan only in accordance with the following provisions:

(a) The outdoor wood-fired furnace shall not be used to burn any of the prohibited materials listed in Section (4) of this ordinance.

(b) The outdoor wood-fired furnace shall be located at least 500 feet from the nearest building which is not on the same property as the outdoor wood furnace.

(c) The outdoor wood-fired furnace shall have a chimney that extends at least fifteen (15) feet above the ground surface. The Town Board may approve a lesser height on a case-by-case basis if necessary to comply with manufacturer recommendations and if the smoke from the lower chimney height does not create a nuisance for neighbors.

(8) Fire Department Practice Burns. Notwithstanding Sections (3) and (4) of this ordinance, the Town of Sheboygan Volunteer Fire Department may burn a standing building if necessary for fire fighting practice and if the practice burn complies with the requirements of the Department of Natural Resources.

(9) Exemption for Burning Certain Papers.

(a) Notwithstanding Section (4)(h) of this ordinance, paper and cardboard products may be used as a starter fuel for a fire that is allowed under this ordinance.

(b) Small quantities of confidential papers from a residence may be burned if necessary to prevent the theft of financial records, identification or other confidential information.

(c) Confidential papers from a commercial enterprise shall be shredded or destroyed in a manner other than burning.

(d) A fire set for burning of a small quantity of confidential papers shall be subject to and comply with Sections (5)(a)-(5)(c), (5)(f) and (5)(k)-(5)(o) of this ordinance.

(10) Liability. A person utilizing or maintaining an outdoor fire shall be responsible for all fire suppression costs and any other liability resulting from damage caused by the fire.

(11) Right of Entry and Inspection. The Fire Chief or any authorized officer, agent, employee or representative of the Town of Sheboygan Volunteer Fire Department or the Town of Sheboygan who presents credentials may inspect any property for the purpose of ascertaining compliance with the provisions of this ordinance. Note: If the owner or occupant of the premises denies access to the property for this purpose, a special inspection warrant may be obtained in accordance with Wis. Stat. § 66.0119.

(12) Enforcement and Penalties.

(a) The Fire Chief, the Town Chairperson and the Town Ordinance Enforcement Officers are authorized to enforce the provisions of this ordinance.

(b) The penalty for violation of any portion of this ordinance shall be a forfeiture of not less than Twenty-five dollars ($25.00) or more than Two Hundred Fifty dollars ($250.00) plus the cost of prosecution. Penalties are doubled for second and subsequent offenses.

(c) The bond or forfeiture penalty for the first violation of this section is $50.00 plus penalty assessments and court costs.

(d) The bond or forfeiture penalty for the second violation of this section is $100.00 plus penalty assessments and court costs.

(e) The bond or forfeiture penalty for the third and subsequent violations of this section is $150.00 plus penalty assessments and court costs."

**Section 3. Severability.** Should any portion of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder shall not be affected.

*(The rest of this page intentionally blank).*

**Section 4.** **Effective Date.** This Ordinance shall take effect upon enactment.

Enacted this 20 day of August, 2019.

**TOWN OF SHEBOYGAN**

By: _____
**Daniel W. Hein**, Chairperson

## CERTIFICATE OF CLERK

I hereby certify that the foregoing Ordinance was duly enacted by the Town Board of the Town of Sheboygan on the 20 day of August, 2019.

Peggy Fischer
**Peggy Fischer**, Town Clerk

## ROLL CALL VOTE

| | Aye | Nay |
|---|---|---|
| Chairperson Daniel W. Hein | ✓ | |
| Supervisor Char Gumm | ✓ | |
| Supervisor James Schwinn | ✓ | |
| Supervisor John Wagner | ✓ | |
| Supervisor Alexandra Nugent | ✓ | |

Posted: 8/22, 2019.

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