

TOWN OF ONLEY

ORDINANCE No. 003-20

JULY 2020

**AN ORDINANCE REGULATING OPEN BURNING IN THE
TOWN OF ONLEY**

WHEREAS, the Town Council of the Town of Onley desires to promote the public health, safety, and welfare of the residents of the Town of Onley; and

WHEREAS, it is declared to be in the public interest to regulate and restrict open burning in the town limits of the Town of Onley; and

WHEREAS, under the authority of §15.2 – 922.1 of the Code of Virginia, the Town of Onley may enact an ordinance to regulate or prohibit the making of fires in streets, alleys, and other public places and regulate the making of fires on private property; and

WHEREAS, the adoption of this ordinance shall repeal the Onley Ordinance Regulating Open Burning in the Town of Onley (No. 002-14) dated April 2015;

BE IT THEREFORE ORDAINED, by the Town Council of the Town of Onley that the following provisions be enacted regulating open burning in the Town of Onley.

State law references; Regulating or prohibiting the making of fires; §15.2-922.1.

Sec. 1. Title and authority.

This Ordinance, entitled “An Ordinance Regulating Open Burning in the Town of Onley” is adopted pursuant to the authority contained in the Code of Virginia, §15.2-922.1.

Sec. 2. Purpose.

The purpose of this Ordinance is to protect public health, safety, and welfare by regulating open burning with the Town to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This Ordinance is intended to supplement the applicable regulations promulgated by the state air pollution control board and other applicable regulations and laws.

Sec. 3. Scope of Ordinance.

This Ordinance shall apply to all areas of the Town of Onley.

Sec. 4. Application of Ordinance.

Except as provided in sections 8 and 9, the provisions of this Ordinance apply to any person who permits or engages in open burning or who permits or engages in burning using open pit incinerators, conical burners (teepee burners), and such other devices or methods specifically designed to provide good combustion performance.

The provisions of the Ordinance do not apply to air curtain incinerators subject to the provisions of (i) Article 45 (9VAC 5-40-6250 et seq.), 46 (9 VAC 5-40-6550 et seq.), or 54 (9 VAC 5-40-7950 et seq.) of 9 VAC 5 Chapter 40 or (ii) Subparts Ed, AAAA or CCCC of 40 CFR 60.

Sec. 5 Definitions.

For the purpose of this Ordinance and subsequent amendments or any orders issued by the Town, the words or phrases shall have the meaning given them in this section. The following is a list of definitions used in the Town of Onley Ordinance.

Automobile graveyard means any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

Built-up area means any area with a substantial portion covered by industrial, commercial or residential buildings.

Clean burning waste means waste which is not prohibited to be burned under this ordinance and which consists of (i) 100 percent wood waste, (ii) 100 percent clean lumber or clean wood, (iii) 100 percent yard waste, or (iv) 100 percent mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

Clean wood means uncontaminated natural or untreated wood. Clean woods includes, but is not limited to, by-products of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.

Commercial waste means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

Construction waste means solid waste which is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, and liquid, compressed gases or semi-liquids, and garbage are no construction wastes and the disposal of such materials shall be in accordance with the regulation of the Virginia Waste Management Board.

Debris waste means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

Demolition waste means that solid waste which is produced by the destruction of structures, their foundations, or both and includes the same materials as construction waste.

Garbage means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

Hazardous waste means a "hazardous waste" as described in 9 VAC 20 Chapter 60 (9 VAC 20-60) (Hazardous Waste Management Regulations.)

Household waste means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residence, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreational areas. Household wastes do not include sanitary waste in septic tanks (septage) which is regulated by other state agencies.

Industrial waste means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.

Open burning means the combustion of solid waste without:

- a. Control of combustion air to maintain adequate temperature for efficient combustion;

- b. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
- c. Control of the combustion of products' emission.

Open pit incinerator means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.

Refuse means all solid waste products having the characteristics of solids rather than liquids and which are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

Salvage operation means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

Sanitary landfill means an engineered land burial facility for the disposal of household waste which is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid waste, such as commercial solid waste, non-hazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste, and non-hazardous industrial solid waste. See Part I (9 VAC 20-80-10 et seq.) 9 VAC 20 Chapter 80 (Solid Waste Management Regulations) for further definition of these terms.

Smoke means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

Special incineration device means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition waste or (ii) clean wood.

Section 6. Prohibitions on open burning.

- (a) No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of refuse or waste except as provided in this article.

- (b) No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide firefighting instruction at firefighting training schools having permanent facilities.
- (c) No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.
- (d) No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial or construction waste.
- (e) The agricultural practice of in-field row-by-row burning of polyethylene sheeting or other plastic material by a mechanical burner shall be exempted from this section; however, open burning of bulk polyethylene or plastic sheeting shall be prohibited. Bona fide firefighting instruction at firefighting training schools having permanent facilities shall be exempted from this section.

Section 7. Permissible open burning.

Open burning is permissible only in accordance with the following specifications:

- (1) Open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers; however, applicable materials specified in this ordinance shall not be burned, and such fires shall be attended at all times. Notice of open fires specified in this section shall not be required;
- (2) Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;
- (3) Open burning for the destruction of classified military documents;
- (4) Open burning of forests and fields in accordance with forest management and agricultural practices approved by the state air pollution control board provided that the burn area is at least 1,000 feet away from any occupied building unless the occupant has granted prior permission and in accordance with the Department of Forestry's smoke management plan (re: 9 VAC 40-5631);
- (5) In urban areas, open burning is permitted for the disposal of one's own personal yard waste (leaves and tree waste and garden trimmings) located on the premises of private property, provided that no regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road. In non-urban areas,

open burning is permitted for the disposal of one's own personal leaves and tree, yard waste and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings. No burning of commercial yard waste, or disposal of yard waste for hire, shall be permitted within the Town. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and provided that prevailing winds are away from any town or built-up area;

- (6) Open burning is permitted on site for the destruction of household waste by homeowners or tenants, provided that the following conditions are met:
 - a. The burning takes place on the premises of the dwelling;
 - b. Animal carcasses or animal wastes are not burned;
 - c. Garbage is not burned;
 - d. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and
 - e. No regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.

- (7) Open burning is permitted for the disposal of debris waste resulting from one's own property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations which may be approved by (designated local official), provided the following conditions are met:
 - a. All reasonable efforts shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by (designated local official);
 - b. The material to be burned shall consist of brush, stumps, and similar debris waste and shall not include demolition material;
 - c. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;
 - d. The burning shall be conducted at the greatest distance practical from highways and air fields; and
 - e. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area; and

- (8) Open burning or the use of special incineration devices is permitted on site for the destruction of clean burning waste and debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations.

Section 8. Attendance at fires.

All burning activities specified in this section shall be attended by a responsible agent of the owner or contractor. All open burning shall be constantly attended until the fire is extinguished. At least one portable fire extinguisher with a minimum 4A rating, or two portable fire extinguishers with a minimum 2A 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 use. Such equipment shall be sufficient to extinguish embers.

Section 9. Notification of 911 center.

Prior to conducting, causing or permitting any open burning authorized, specified or referenced in sections 5 and 6, the property owner or his agent shall notify the on-duty dispatcher at the Eastern Shore of Virginia 911 Communications Center of the location of such open burning, expected starting and ending time, the name of the responsible person conducting such operations, and an emergency telephone number. Such notification shall be made by telephone or in person not earlier than one hour preceding the anticipated start of operations. The property owner or his agent shall notify the 911 center of the cessation of operations within one hour following such cessation. Whenever a fire company or the department of forestry is directly supervising the open burn, direct notice to the 911 center shall be required by the owner or agent unless otherwise directed by the fire chief or forest warden. The receipt and acceptance of such notice shall not constitute a permit or authorization to burn; the owner or other person shall bear full responsibility to obtain any and all permits required prior to notifying the 911 center.

Section 10. Precautions required to prevent spread of fire.

It shall be unlawful for any owner or lessee of land to set fire to or to procure another to set fire to any woods, brush, logs, leaves, grass, debris or other inflammable material upon such land unless he previously has taken all reasonable care and precaution, by having cut and piled the material or carefully cleared around the material, to prevent the spread of such fire to lands other than those owned or leased by him. It shall be unlawful for any employee of any such owner or lessee of land to set fire to or to procure another to set fire to any woods, brush, logs, leaves, grass, debris or other inflammable material upon such land unless he has taken similar precautions to prevent the spread of such fire to any other land.

Section 11. Permits.

Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, a building permit shall be required from the county building/fire official, such permits to be granted only after confirmation that the burning can and will comply with the applicable provisions in regulations for the control and abatement of air pollution and that any conditions are met which are deemed necessary by the county building/fire official to ensure that the operation of the devices will not endanger the public health and welfare.

Section 12. Demolition permit required.

No property owner or other person shall cause or permit open burning of any building or other structure for the purpose of demolition or elimination of a hazard unless he shall have applied for and obtained a valid demolition permit from the building official/fire official of the governing body in accordance with the Uniform Statewide Building Code and the Statewide Fire Prevention Code. The official issuing such permit may establish such conditions as may be reasonably necessary to protect the safety and welfare of the general public.

Section 13. Suspension of burning.

When it is deemed necessary by the Onley Town Council or by the Mayor of the Town of Onley ratified by the Onley Town Council at the next regularly scheduled meeting, an open burning ban may be imposed on the entire Town or sections of the Town when conditions exist that would make open burning a threat to life or property, or nuisance as provided for in the Virginia Statewide Fire Prevention Code, F-301.10; or Code of Virginia §15.2-1102, at any time during the year.

Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in Part VII of the regulations for the control and abatement of air pollution or when deemed advisable by the state air pollution control board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

Section 14. Penalties for violation.

- (a) Any violation of this article is punishable as a Class I misdemeanor.
- (b) Each separate incident may be considered a new violation.

Section 15. Responsibilities of owner.

Open burning or the use of special incineration devices permitted under the provisions of this article shall not exempt or excuse any owner or other person from the consequences, liability, damages, or injuries that may result from such conduct, nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in accordance with this article.

Section 16. Issuance of summons authorized.

A summons charging an offense under this article may be issued by any law enforcement officer employed by the Town of Onley or by Accomack County witnessing such violation without the necessity of a warrant being obtained by a responding fire company or a complainant.

Section 17. Liability for causing damage by fire.

If any forest fire originates as a result of the violation by any person of any provision of this article, such person shall, in addition to any other penalty imposed for such violation, be liable to the commonwealth, the county, and to the Town for the full amount of all expenses incurred by the commonwealth, the county, and the Town, respectively, in suppressing such fire, such amounts to be recoverable by action brought by the state forester in the name of the commonwealth on behalf of the commonwealth and by the board of supervisors on behalf of the county, and by the mayor on behalf of the Town of Onley.

Sec. 18. Effective date.

This ordinance shall become effective upon passage.

Enacted this 9th day of July, 2020.

Upon motion made by Councilman Billye D. Custis as seconded by Councilman Rose M. Pierson, and the recorded vote as follows:

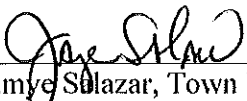
Woody Zember:	Vote: <u>no</u>
Susan Rillo:	Vote: <u>yes</u>
Claudia Harmon:	Vote: <u>yes</u>
Rose Pierson:	Vote: <u>yes</u>
Billye D. Custis	Vote: <u>yes</u>
Ned Finney	Vote: <u>yes</u>

TOWN OF ONLEY, VA

By: 

Matthew Hart, Mayor

Attest:



Jamye Salazar, Town Manager

I certify that the foregoing is a true copy of an ordinance adopted on July 9, 2020, by the Onley Town Council.



Jamye Salazar, Town Manager