

Current

STARKE COUNTY ORDINANCE TO PROMOTE SAFE BURNING

THIS IS AN ORDINANCE to ensure the proper open burning of solid waste, to control unsafe and improper open burning of wastes, to define illegal open burning, to establish violations thereof, and to provide for clean-up of materials illegally burned in Starke County, Indiana.

WHEREAS, the Indiana Code defines legal and illegal open burning activities; and

WHEREAS, the Indiana Code authorizes counties to adopt and enforce local air pollution control ordinances; and

WHEREAS, the Indiana Code provides that a governmental unit may regulate conduct that might endanger the public health, safety or welfare; and

WHEREAS, the Indiana Code prescribes proper methods of solid waste disposal, compliance and penalties; and

WHEREAS, it is the desire and duty of the Board of Commissioners of Starke County and the Board Of Directors of Starke County Environmental Management District to protect human health, natural resources and the environment, and the economic development potential of Starke County; and

WHEREAS, it is in the public interest to enact this ordinance to eliminate illegal open burning of certain materials in Starke County.

NOW THEREFORE, UPON THE RECOMMENDATION OF THE BOARD OF DIRECTORS OF THE STARKE COUNTY ENVIRONMENTAL MANAGEMENT DISTRICT, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF STARKE COUNTY, INDIANA, as follows:

Section One

Title.

This ordinance is titled "Ordinance to Promote Safe Burning."

Section Two

Purpose.

The purpose of this ordinance is to prohibit illegal open burning; to establish penalties for violations thereof, and to provide for the clean-up of illegal open burning sites that endanger human health, private and public property, and the environment.

This Ordinance does not regulate or prohibit either the owner or tenant of property from: A) the burning of leaves that either fall or are wind blown onto such property; B) the burning of brush, paper, limbs, trees, or woody vegetation from such property; or, C) recreational

campfires or bonfires upon such property. This Ordinance does not regulate or apply to acts of war, acts of terrorism, or acts of God.

This ordinance is intended to protect the citizens of Starke County, Indiana, from health or safety threats and from the burden of costs related to the control and clean-up of illegal open burning.

The primary intent of this ordinance is to prevent illegal open burning, to promote clean-up of illegal open burning sites, and to encourage proper waste management alternatives, including recycling. Elimination of illegal open burning is necessary to protect human health and the natural environment, and to protect the value of property from the negative effects of illegal open burning. Fines and sanctions are to deter violations of this ordinance.

Section Three

Definitions.

a) "Emergency Situation" - refers to any situation that because of: 1) the type of material being burned (i.e. hazardous or noxious materials), 2) the atmospheric conditions during the burning, or 3) the careless nature in which the burning is occurring; poses a threat to the public health, the Safety of public or private property, or the welfare of the environment.

b) "Hazardous Materials" - means any waste that because of its quantity; concentration; or physical, chemical, or infectious characteristics may: 1) cause or significantly contribute to an increase in mortality or increase in serious irreversible, or incapacitating reversible, illness; or, 2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, handled, disposed of or otherwise managed; or 3) be nondegradable or persistent in the environment; or 4) be biologically magnified; or 5) cause or tend to cause cumulative effects; or 6) be defined in Section 261.3 of 40 CFR and any future amendments. This section includes household hazardous materials, batteries, used non-food oils, and solvents.

c) "Noxious Materials" - are defined as materials that when burned produce byproducts that are injurious to human health or the environment. This list of materials shall include, but not be limited to, tires, asphalt roofing, plastic products, waste oil and oil contaminated products, herbicides/pesticides and herbicide/pesticide contaminated products.

d) "Open Burning" - means any fire that emits directly into the outdoor atmosphere.

e) "Person" - for the purposes of this ordinance, shall be defined by the definition in Section 13-11-2-158 of the Indiana Code. ("Person" means any individual, partnership, co-partnership, firm, company, corporation, limited liability company, association, joint stock company, trust, estate, municipal corporation, city, school city, town, school district, school corporation, county, any consolidated unit of government, political subdivision, state agency, or any other legal entity.)

f) "Solid waste" - shall mean any garbage, refuse, sludge, or other discarded or disposed materials, including solid, liquid, or semi-solid, or contained gaseous materials resulting from any

operation, activity or source. For the purposes of this ordinance, this definition excludes hazardous materials as defined above.

g) "Unattended Open Burning" means the open burning of materials without a person in attendance. This definition shall include, but not be limited to, leaving the property where open burning is occurring, being outside of visual sight of where the open burning is occurring, going indoors while open burning, and leaving a fire before it is fully extinguished.

Section Four

Act Prohibited.

The following acts are prohibited under this ordinance:

a) The open burning of all hazardous materials and all noxious materials, as defined within this ordinance.

b) Unattended open burning or open burning in any manner that creates or could create an emergency.

c) Open burning in a manner that violates the Indiana Code, its subsequent revisions, and the associated Indiana Administrative Code.

d) This Ordinance does not regulate or prohibit either the owner or tenant of property from: A) burning leaves that either fall or are wind blown onto such property; B) burning brush, paper, limbs, trees, or woody vegetation from such property; or, C) recreational campfires and bonfires upon such property.

Section Five

Ordinance Enforcement Authority.

a) It shall be the duty of the Solid Waste Environmental Management District, the Starke County Health Department, and area law enforcement officials in or serving in Starke County ("Enforcement Agents") to investigate reports of violations of this Ordinance. Nothing herein shall prevent any agency, department or unit of the State of Indiana from investigating or causing charges to be filed for any violation of this Ordinance. Any person violating any provision of this Ordinance shall be subject to punishment by appropriate fines or sanctions in the schedule in Section Eight herein.

Section Six

Investigation.

a) It shall be the duty of the authorized enforcement agents to investigate any report or complaint of a violation of this ordinance. Any person who violates any provision of this ordinance shall be subject to sanctions or fines as set forth in Section Eight of this ordinance.

b) If access to property is required, the investigation shall proceed on a voluntary basis. If access is needed to proceed with an investigation, but is denied, the authorized enforcement agents may seek any necessary authorizations, including a search warrant, to enter the property; provided, however, that in cases of a visible emergency access to property shall be deemed granted.

c) Witness accounts of any acts prohibited herein are evidence to identify violators and violations. Any other pertinent evidence may be considered to determine whether a violation of this ordinance has occurred and the identity of the violator.

Section Seven

Fire Suppression, Enforcement, and Clean-up.

a) If a condition violating this ordinance exists on real property, any of the authorized enforcement agents may take the following actions:

1) In cases of an emergency, an authorized enforcement agent may take immediate action to suppress the fire. If action to suppress fires and bring the property into compliance occurs, the costs of these actions may be recovered as set forth in Section Eight of this ordinance. Once an emergency is contained, notice shall be served upon all owner(s) of record requiring such owners to restore the property and bring the property into compliance within thirty (30) days from the day of receipt or refusal to accept notice, or submit an acceptable clean-up plan specifying dates for completion of the clean-up. Written notice shall be served by either personal service upon the Owners or by depositing the written notice in the mails of the United States Postal System by certified mail, return receipt requested, with sufficient postage attached. Certified mail shall be addressed to the Owners at the Owners last mailing addresses appearing upon the records maintained by the Auditor of Starke County. Personal service upon the Owners shall occur or certified mail shall be deposited mails no later than seventy-two (72) hours following the containment of the emergency.

2) In cases of past violations where there is currently no immediate danger, certified notice shall be mailed to all owner(s) of record at their last known mailing address. Owner(s) of record will be allowed thirty (30) days from the day of receipt/refusal of notice to bring the property into compliance or submit an acceptable clean-up plan specifying dates.

3) If further actions in violation of this ordinance occur, or if no action to bring a property into compliance by the property owner occurs, the Starke County Environmental Management District may take the appropriate actions to bring the property into compliance with this ordinance.

b) It shall be a violation of this ordinance to interfere with any authorized enforcement agent while in the performance of duties hereunder.

c) The owner of property on which illegal open burning acts have occurred may be included as a party in an enforcement action against a person who committed the violation.

d) Enforcement of this ordinance shall be brought as set forth in:

- 1) Indiana Code Section 34-28-5-1, as hereafter amended, recodified or replaced; or
- 2) Indiana Code Section 36-9-30-35, as hereafter amended, recodified or replaced.

The Starke County Prosecutor, the Starke County Attorney, The Starke County Board of Health, attorney for the Starke County Environmental Management District, or a designated agent of any of these, may pursue enforcement of this ordinance in the Starke Circuit Court, or any successor court.

e) Whenever a law enforcement officer believes in good faith that a person has committed an ordinance violation, the officer may detain that person for a time sufficient to:

- 1) Inform the person of the allegations.
- 2) Obtain the person's name, address, phone number, and date of birth.

A person who knowingly or intentionally refuses to provide the above information commits a Class C misdemeanor pursuant to Indiana Code Section 34-28-5-4.

f) A notice of ordinance violation shall state the name of the person to whom the notice is being issued, the nature of the violation, the specific section of this ordinance that has been violated, the date of the notice, and the fine imposed for the violation in accordance with Section 8 of this ordinance. The notice of ordinance violation shall direct the person to whom it is issued to appear before the specific authorized enforcement agent that issued the notice of ordinance violation and, if appropriate, submit an acceptable clean-up plan specifying dates.

Section Eight

Penalties and Sanctions.

a) Any person who violates any provision of this ordinance shall pay within thirty (30) days the appropriate sanctions or fines as outlined in Section 8 (b) of this ordinance to the Starke County Environmental Management District for payment to the general fund. If a violator fails to pay the fines within thirty (30) days of the date of the notice of ordinance violation, an enforcement action may be filed in a Court of general jurisdiction in Starke County, Indiana. Upon adjudication or admission of any violation of this ordinance in such Court, the violator shall be subject to fines and penalties as outlined in Section 8 (c) of this ordinance.

b) Any person who violates any provision of this ordinance and pays such fines within thirty (30) days of the violation, shall pay sanctions or fines as follows:

- 1) Any person who violates any of the provisions of this ordinance, except the burning of noxious materials and/or hazardous materials, and whose violation is a first violation, commits a Class "C" violation of this ordinance. Persons responsible for a Class "C" violation shall: 1) pay for the costs of fire suppression-if the fire department was required to extinguish the fire, 2) pay for and provide receipts evidencing all costs related to the clean-up of waste and proper disposal of waste related to the violation; or reimburse the authorized enforcement agents for all costs related to the clean-ups

carried out, and 3) provide receipts evidencing one year of contracted waste disposal service by a licensed waste hauler.

2) Any person who violates any of the provision of this ordinance, except the burning of noxious materials and/or hazardous materials, and whose violation is a second or any other subsequent violation, commits a Class "B" violation of this ordinance. Persons responsible for a Class "B" violation shall: 1) pay a fine of no less than One Dollar (\$1.00) and no greater than One Thousand Dollars (\$1000.00); 2) pay for the costs of fire suppression, if the fire department was required to extinguish the fire, 3) pay for and provide receipts evidencing all costs related to the clean-up of waste and proper disposal of waste related to the violation; or reimburse the authorized enforcement agents for all costs related to the clean-ups carried out; and 4) provide receipts evidencing one year of contracted waste disposal service by a licensed waste hauler.

3) Any person whose acts violate this ordinance by the burning of noxious materials and/or hazardous materials commits a Class "A" violation of this ordinance. Persons responsible for a Class "A" violation shall: 1) pay a fine no less than One Dollar (\$1.00) and no more than Two Thousand Five Hundred Dollars (\$2,500.00); 2) pay for the costs of fire suppression, if the fire department was required to extinguish the fire; 3) pay for and provide receipts evidencing all costs related to the violation; or reimburse authorized enforcement agents for all costs related to the clean-ups carried out; and, 4) provide receipts evidencing one year of contracted waste disposal service by a licensed waste hauler.

c) Upon adjudication or admission of any violation of this ordinance by the Court, the violator shall be subject to the following penalties:

1) Any person who commits a Class "C" violation of this ordinance shall be fined a sum of not less than One Dollar (\$1.00) and not greater than Five Hundred Dollars (\$500.00) per violation.

2) Any person who commits a Class "B" violation of this ordinance shall be fined a sum of not less than One Dollar (\$1.00) and not greater than One Thousand Dollars (\$1,000.00) per violation.

3) Any person who commits a Class "A" violation of this ordinance shall be fined a sum of not less than One Dollar (\$1.00) and not greater than Two Thousand Five Hundred Dollars (\$2,500.00) per violation.

4) Any person found to be in violation of any provision of this ordinance, whether by admission or by adjudication, shall, in addition to any fines as set forth above, be required to provide receipts evidencing one year of contracted waste disposal service by a licensed waste hauler, be assessed all costs and expenses of the fire suppression, investigation, clean-up, and removal of waste connected with the violation, and shall, in addition, be liable for all reasonable attorneys fees, court costs, and other costs incurred by the County or District in connection with the enforcement of the ordinance.

5) Failure or refusal to bring property into compliance with this ordinance after adjudication of a violation shall constitute a Class "A" violation of this ordinance. Each day noncompliance continues shall constitute a separate violation of this ordinance.

d) A property owner cannot direct another person to carry out actions in violation of this ordinance or knowingly allow another person to carry out actions in violation of this ordinance on their property.

Violating this provision constitutes violation of the ordinance and carries the equivalent sanctions and penalties as the violation.

e) Collection of money under any Section of this ordinance shall constitute collection of money owed the Unit pursuant to Indiana Code Section 36-1-4-17.

f) All fines, penalties and clean-up costs paid pursuant to this ordinance shall be deposited into the General Fund of the County of Starke, State of Indiana. Collection of such amounts shall constitute collection of money owed the unit pursuant to Indiana Code Section 36-1-4-17.

Section Nine

Severability.

If any part of this ordinance shall be adjudicated invalid, that part shall be deemed severable and its invalidity shall not affect the remaining parts of this ordinance.

Section Ten

Applicability and Effective Date.

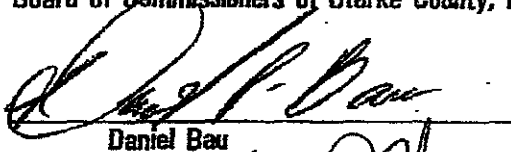
a) This ordinance shall apply to the entirety of Starke County, Indiana. Enforcement shall include incorporated municipalities, unless such areas currently enforce a more stringent ordinance.

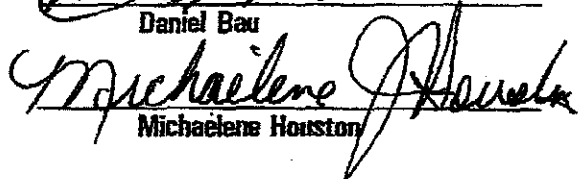
b) All portions of former ordinances in conflict herewith are hereby repealed or superseded. This ordinance shall become in full force and effect from and after its adoption and insertion into the Starke Code Book of Ordinances.

c) Any violation of the provisions of this ordinance that occurred prior to the enactment of this ordinance, and which was a violation of existing state law, shall not be exempted from enforcement under this ordinance.

Passed and adopted by the Board of Commissioners of Starke County, Indiana this 1 day of July, 2004. 2002

Board of Commissioners of Starke County, Indiana.


Daniel Bau


Michaelene Houston

Kevin Kroft